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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

20-cr-188 (JSR)

6 RUBEN WEIGAND and
7 HAMID AKHAVAN,

Defendants.

Trial

8 -----x
9 New York, N.Y.

10 March 1, 2021
11 9:15 a.m.

12 Before:

13 HON. JED S. RAKOFF

14 District Judge

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1 APPEARANCES

2 AUDREY STRAUSS

3 United States Attorney for the
Southern District of New York

4 BY: NICHOLAS FOLLY

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9 DECHERT LLP

10 Attorneys for Defendant Weigand

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13 ANDREW J. LEVANDER

14 STEPHEN PELLECHI

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17 Attorney for Defendant Weigand

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BY: MATTHEW G. LINDENBAUM

1 THE COURT: All right. Since Mr. Akhavan is not here,
2 we'll deal first with some matters that relate only to
3 Mr. Weigand. But first, will counsel please identify
4 themselves for the record.

5 MR. FOLLY: Good morning, your Honor. Nicholas Folly,
6 Tara La Morte, and Emily Deininger for the government.

7 MR. GILBERT: Good morning, your Honor. Michael
8 Gilbert on behalf of Mr. Weigand.

9 THE COURT: Who else? Oh, is that Mr. Weigand there?

10 MR. GILBERT: Yes, that is Mr. Weigand sitting next to
11 me.

12 DEFENDANT WEIGAND: Good morning, your Honor.

13 MR. TAYBACK: Good morning, your Honor. Christopher
14 Tayback on behalf of Mr. Akhavan. Behind me is Mr. Burck and
15 Sara Clark.

16 THE COURT: OK. So two matters relating to
17 Mr. Akhavan.

18 The first is that because I didn't think it would be
19 useful to have his armed guard here in the courthouse, what I
20 arranged, and had my law clerk send an email to counsel, was
21 that the armed guard or guards would leave him, make sure he
22 has entered the security area, and then, at the end of the day,
23 we'll have to call them, they'll pick him up once he leaves the
24 courthouse. Understood?

25 MR. GILBERT: Yes. Thank you, your Honor. I believe

1 the guard came into the courthouse this morning. But moving
2 forward it's not necessary --

3 THE COURT: If they can come in, that's fine. That's
4 even better. Because otherwise I was going to suggest that you
5 would have to stick with Mr. Weigand at every moment. If he
6 went to the men's room you'd have to go to the men's room, etc.
7 So you may prefer to have those important duties left to the
8 armed guard.

9 MR. GILBERT: I will stick with him, your Honor.

10 THE COURT: Very good.

11 We had a *Curcio* hearing some months ago, but my
12 understanding is there is some additional *Curcio* matter that
13 the government wishes to have Mr. Weigand questioned about?

14 MS. LA MORTE: Your Honor, there is one additional
15 *Curcio* matter, but it came to Mr. Akhavan, not Mr. Weigand.

16 THE COURT: Oh, I see. Nothing as to Mr. Weigand.

17 MS. LA MORTE: We were going to redo the *Curcio* that
18 occurred by videoconference with respect to Mr. Weigand.

19 THE COURT: Because you interpret the statute as
20 requiring it to be in person?

21 MS. LA MORTE: Yes, your Honor. There is a -- when
22 you read that provision, it can be interpreted to require that
23 the --

24 THE COURT: I don't interpret it that way, but, on the
25 other hand, since Mr. Akhavan is here, time is hanging heavy on

1 our hands, so go ahead.

2 MS. LA MORTE: This would be with respect to
3 Mr. Weigand, your Honor.

4 THE COURT: OK. So, Mr. Weigand, I'm going to have
5 the government put all the questions that their little hearts
6 desire to you at this time regarding possible conflict.

7 Go ahead.

8 MS. LA MORTE: Your Honor, would you like me to stand
9 for this?

10 THE COURT: No.

11 MS. LA MORTE: OK.

12 THE COURT: Just as a general matter, because of the
13 pandemic arrangements, I don't think any lawyer needs to stand
14 when making objections or any other -- the only time he needs
15 to stand is when the jury comes into the courtroom and when the
16 jury leaves the courtroom, out of respect for the jury. But
17 otherwise it's better if you actually sit but speak directly
18 into the mike.

19 While I'm thinking about that, let me mention about
20 objections. So I do not allow so-called speaking objections.
21 So if you have an objection, you say either -- no more than
22 three words. The first word is "Objection." And the second
23 word is either your ground, like "hearsay," "foundation," etc.,
24 or the rule under the Federal Rules of Evidence on which you're
25 basing your objection, like 403. So if you feel you need a

1 sidebar, you may ask for one. Usually I will grant that. But
2 I discourage having too many sidebars because, to do sidebars
3 and not have them heard by the jury, we really have to go into
4 a separate room down the hallway. So it always takes a while.
5 The jury is there twiddling their thumbs. So I think we need
6 to try to limit sidebars as much as possible. But if you want
7 a sidebar, I will give you a sidebar, unless I think it's
8 utterly unnecessary.

9 Any question about that?

10 OK. So go ahead with the *Curcio*.

11 MS. LA MORTE: Mr. Weigand, how old are you?

12 DEFENDANT WEIGAND: I'm 38.

13 MS. LA MORTE: How far did you go in school?

14 DEFENDANT WEIGAND: I have a bachelor's degree.

15 MS. LA MORTE: Do you currently consult a doctor for
16 any condition?

17 DEFENDANT WEIGAND: No.

18 MS. LA MORTE: Are you currently under the influence
19 of alcohol or drugs of any kind?

20 DEFENDANT WEIGAND: No.

21 MS. LA MORTE: Are you feeling well enough to proceed
22 with this hearing today?

23 DEFENDANT WEIGAND: Yes, I do.

24 MS. LA MORTE: Are you currently represented by
25 Michael Gilbert and Shriram Harid of the law firm of Dechert

1 LLP and also by Michael Artan?

2 DEFENDANT WEIGAND: Yes, I am.

3 MS. LA MORTE: Mr. Gilbert, Mr. Harid, and Mr. Artan
4 are retained or appointed counsel?

5 DEFENDANT WEIGAND: Retained.

6 MS. LA MORTE: Do you know that Mr. Harid has applied
7 for a position with the U.S. Attorney's Office for the Southern
8 District of New York --

9 DEFENDANT WEIGAND: Yes.

10 MS. LA MORTE: -- that is the office that is
11 prosecuting you?

12 DEFENDANT WEIGAND: Yes, I know.

13 THE COURT: I'm sorry, excuse me. What is the person
14 in the back -- either come in or stay out, but don't just stand
15 there with the door half open.

16 Go ahead.

17 MS. LA MORTE: Mr. Weigand, because of Mr. Harid's
18 pending application for employment with the U.S. Attorney's
19 Office for the Southern District of New York, I wish to apprise
20 you of certain matters. It is substantial to the idea of an
21 adequate defense in a criminal proceeding that your attorney
22 has no conflict or adverse interest of any kind. That is to
23 say, he cannot, unless it is with your knowledge and consent,
24 have any conflicting interest in the case. You have the right
25 to the assistance of a lawyer whose loyalty to you is undivided

1 and not subject to any factor that might intrude upon that
2 loyalty. The purpose of this is to ensure that you have a full
3 devoted defense furnished to you by an attorney who has no
4 other possible interest of any kind in this matter. Do you
5 understand that?

6 DEFENDANT WEIGAND: Yes, I understand.

7 MS. LA MORTE: Do you understand that Mr. Harid's
8 application for employment with the U.S. Attorney's Office for
9 the Southern District of New York as a prosecutor creates a
10 potential that he may have allegiances to interests that may be
11 adverse to your interests?

12 DEFENDANT WEIGAND: You can see it that way maybe,
13 yes.

14 MS. LA MORTE: Do you understand that by deciding to
15 proceed with Mr. Harid and Mr. Gilbert, you are waiving any
16 argument as to your sentencing that they were ineffective or
17 deficient in their representation of you because Mr. Harid
18 suffered from a conflict of interest by virtue of his
19 application for a position with the U.S. Attorney's Office?

20 DEFENDANT WEIGAND: Yes, I understand.

21 MS. LA MORTE: Have you discussed these conflict-of-
22 interest matters with Mr. Gilbert, Mr. Harid, and Mr. Artan?

23 DEFENDANT WEIGAND: Yes, I did.

24 MS. LA MORTE: Are you satisfied with their
25 representation of you?

1 DEFENDANT WEIGAND: Yes, I am.

2 MS. LA MORTE: If you could describe for me in your
3 own words your understanding of the conflict of interest that
4 potentially arises from Mr. Harid's representation of you while
5 pursuing his application for a position with the U.S.
6 Attorney's Office.

7 DEFENDANT WEIGAND: Yeah. I think it might be that he
8 would represent me less effectively to -- that's -- because
9 trying to get accepted as a prosecutor.

10 (Pause)

11 DEFENDANT WEIGAND: So you couldn't hear? OK.

12 I said, you might think that he is defending me less
13 effectively because he thinks that it's increasing his chance
14 to be selected as a U.S. Attorney.

15 MS. LA MORTE: Mr. Weigand, do you understand that you
16 have a right to consult with a lawyer other than Mr. Gilbert
17 and Mr. Harid in order to determine whether you wish Dechert to
18 represent you?

19 DEFENDANT WEIGAND: Yes, I know.

20 MS. LA MORTE: This is a question for Mr. Harid.
21 Mr. Harid, have you discussed the potential conflicts of
22 interest with Mr. Weigand?

23 MR. HARID: Yes, I have.

24 MS. LA MORTE: And do you feel that he understands the
25 possible risks of being represented by a lawyer with a

1 potential conflict of interest?

2 MR. HARID: I do, yes.

3 MS. LA MORTE: Mr. Harid, is there anything else you
4 would like the Court to state or inquire about in this regard?

5 MR. HARID: Nothing else. Thank you.

6 MS. LA MORTE: Mr. Weigand, would you like the
7 opportunity to consult with another attorney?

8 DEFENDANT WEIGAND: No.

9 MS. LA MORTE: Do you still wish to proceed with
10 Mr. Harid and Dechert as your attorneys in this case?

11 DEFENDANT WEIGAND: Yes, I want.

12 MS. LA MORTE: Have you received any inducements,
13 promises, or threats with regard to your choice of counsel in
14 this case?

15 DEFENDANT WEIGAND: No.

16 MS. LA MORTE: Do you agree to waive any and all
17 future arguments on appeal or otherwise that you were denied
18 effective assistance of counsel because of Mr. Harid's pursuit
19 of a position as a federal prosecutor with the Southern
20 District of New York?

21 DEFENDANT WEIGAND: Yes.

22 MS. LA MORTE: Is your waiver of your right to
23 conflict-free representation voluntary?

24 DEFENDANT WEIGAND: Yes.

25 MS. LA MORTE: No further questions from the

1 government.

2 THE COURT: All right.

3 I find that Mr. Weigand fully understands the
4 potential conflict and has waived the conflict and can proceed.

5 I think we can proceed with the rulings on the motions
6 in limine for both parties, or all three parties, because this
7 could have taken the form of a written order from me, and
8 therefore it's not necessary that Mr. Akhavan be present, but
9 of course I will leave it to his counsel to inform him of those
10 rulings when he arrives.

11 This is in no particular order, but I would note for
12 the record first, there is no right to a motion in limine. You
13 will not find motions in limine listed anywhere in the federal
14 rules. They are a convenience for the parties, and I try to
15 accommodate those conveniences. However, every one of my
16 rulings is subject to reconsideration if a party so-called
17 opens the door. So if I've excluded some evidence and then the
18 door is opened, then the adversary party can reraise the
19 question at that time. So being very aware of that, there may
20 be other reasons for reconsideration, but that would be usually
21 the only one.

22 So the first motion that I want to rule on is the
23 government's motion in limine no. 4, to preclude evidence or
24 argument regarding whether it was "reasonable" for banks to
25 process marijuana-related transactions. That motion is

1 granted, and that area will be excluded.

2 The second is the government's motion in limine no. 2
3 to preclude evidence or argument regarding federal enforcement
4 of marijuana laws, legalization of marijuana in certain states
5 and/or countries, and efforts to legalize marijuana. That
6 motion is granted in part, excluding evidence relating to
7 federal efforts to legalize marijuana or to offer safe harbors
8 to banks. In all other respects, I will take it up as the
9 matter is raised. So with respect to these motions in limine,
10 if I reserve on any matter, then when a question is about to be
11 put to a witness -- here's Mr. Akhavan.

12 All right. Mr. Akhavan is here. So let me interrupt
13 the motions in limine. Let's do the *Curcio* hearing with
14 respect to Mr. Akhavan.

15 MS. LA MORTE: Yes, your Honor. There are two
16 matters, two *Curcios*, that have to occur with respect to
17 Mr. Akhavan. One is the one that we had conducted before. And
18 then the other one is a separate potential conflict for which
19 the government submitted a letter yesterday. And so I will
20 start with the one that we had already done before.

21 THE COURT: That's fine.

22 MS. LA MORTE: Mr. Akhavan, how old are you?

23 DEFENDANT AKHAVAN: 42.

24 THE COURT: You want to bring the microphone --

25 DEFENDANT AKHAVAN: 42, ma'am.

1 THE COURT: Very good.

2 MS. LA MORTE: How far did you go in school?

3 DEFENDANT AKHAVAN: High school, ma'am.

4 MS. LA MORTE: Do you currently consult a doctor or
5 mental health professional for any condition?

6 DEFENDANT AKHAVAN: No, ma'am.

7 MS. LA MORTE: Are you currently under the influence
8 of alcohol, drugs, or medication of any kind?

9 DEFENDANT AKHAVAN: No, ma'am.

10 MS. LA MORTE: Do you understand what is happening
11 today?

12 DEFENDANT AKHAVAN: Yes, ma'am.

13 MS. LA MORTE: Mr. Akhavan, do you wish to have Quinn
14 Emanuel Urquhart & Sullivan, which I will abbreviate to Quinn
15 Emanuel, including attorneys Christopher Tayback and William
16 Burck, represent you in this matter?

17 DEFENDANT AKHAVAN: Yes, ma'am.

18 THE COURT: Do you wish to have Ira Rothken of the
19 Rothken Law Firm represent you in this matter?

20 DEFENDANT AKHAVAN: Yes, ma'am.

21 MS. LA MORTE: Have you been satisfied with the
22 services Quinn Emanuel provided you so far with respect to
23 matter?

24 DEFENDANT AKHAVAN: Yes, ma'am.

25 MS. LA MORTE: Has Quinn Emanuel represented you in

1 other matters which occurred before this one?

2 DEFENDANT AKHAVAN: No, ma'am.

3 MS. LA MORTE: Turning to Mr. Rothken, have you been
4 satisfied with the services Mr. Rothken has provided you so far
5 with respect to this matter?

6 DEFENDANT AKHAVAN: Yes, ma'am.

7 MS. LA MORTE: Has Mr. Rothken represented you in
8 other matters which occurred before this one?

9 DEFENDANT AKHAVAN: Not me directly, but my company.

10 MS. LA MORTE: Were you satisfied with Mr. Rothken's
11 representation of your company in the prior matter?

12 DEFENDANT AKHAVAN: Yes, ma'am.

13 MS. LA MORTE: Your Honor, previously when we had done
14 this, we had referred to two particular individuals that are
15 involved as subject one and subject two. May I have a moment
16 to consult as to whether we should use their names or continue
17 to refer to them in that manner?

18 THE COURT: I think you should.

19 MS. LA MORTE: Thank you.

20 Thank you, your Honor.

21 THE COURT: That reminds me of something else I want
22 to check while it's on my mind. The government has given me
23 three immunity orders. When you're about to call a witness who
24 needs immunity, ask for a sidebar, and we will bring the
25 witness into the sidebar area, and I'll question him as to his

1 taking the Fifth and I'll grant him immunity, and then and only
2 then will I sign the order. So that is my practice, but we do
3 that out of the presence of the jury.

4 OK. Go ahead.

5 And one other thing. What's the full name of Quinn
6 Emanuel?

7 MS. LA MORTE: I probably butchered it when I
8 pronounced it. I can let them tell you.

9 MR. TAYBACK: Quinn Emanuel Urquhart & Sullivan, your
10 Honor.

11 THE COURT: I think the worst fate of the world is to
12 the third or fourth name in any law firm.

13 MS. LA MORTE: OK, Mr. Akhavan. Has Quinn Emanuel
14 informed you that they represent Ardashir Akhavan, your
15 brother --

16 DEFENDANT WEIGAND: Yes, ma'am.

17 MS. LA MORTE: -- and Guy Mizrachi, who the government
18 asserts are subjects of the bank fraud conspiracy charge
19 brought against you in this case?

20 DEFENDANT AKHAVAN: Yes, ma'am.

21 MS. LA MORTE: Have your attorneys discussed with you
22 their representation of Ardashir Akhavan?

23 DEFENDANT AKHAVAN: Yes, ma'am.

24 MS. LA MORTE: Have they discussed with you their
25 representation of Guy Mizrachi?

1 DEFENDANT AKHAVAN: Yes, ma'am.

2 MS. LA MORTE: Do you understand that Quinn Emanuel
3 has a duty of loyalty to your brother and Mr. Mizrachi and that
4 they are required by their duty of loyalty to serve the best
5 interests of your brother and Mr. Mizrachi as well as your best
6 interests?

7 DEFENDANT AKHAVAN: Yes, ma'am.

8 MS. LA MORTE: Do you understand that your attorney's
9 representations of your brother and Mr. Mizrachi may put them
10 in a position where their duty to them conflicts with their
11 duty to you?

12 DEFENDANT AKHAVAN: Yes, ma'am.

13 MS. LA MORTE: And do you understand that it may be in
14 the best interests of your brother and Mr. Mizrachi to take
15 certain positions or actions that may be harmful to your
16 interest in this case?

17 DEFENDANT AKHAVAN: Yes, ma'am.

18 MS. LA MORTE: And do you understand that if you
19 continue to be represented by Quinn Emanuel, they cannot advise
20 or help you in doing anything that would hurt your brother or
21 Mr. Mizrachi, even if it's in your best interests that they do
22 so?

23 DEFENDANT AKHAVAN: Yes, ma'am.

24 MS. LA MORTE: Are you aware that your attorney may
25 have learned information from your brother and Mr. Mizrachi

1 that may be helpful in defending you but they are absolutely
2 prohibited from using it to defend you because of the
3 attorney-client privilege?

4 DEFENDANT AKHAVAN: Yes, ma'am.

5 MS. LA MORTE: Do you understand that Quinn Emanuel
6 cannot help you in providing assistance to the government if
7 you wish to do so that might hurt your brother or Mr. Mizrachi,
8 even if it turns out that providing assistance for the
9 government might be in your best interests?

10 DEFENDANT AKHAVAN: Yes, ma'am.

11 MS. LA MORTE: Do you understand that your attorneys
12 may not wish to take positions in your case before, during
13 trial, or at sentencing, that are critical of or harmful to the
14 interests of your brother or Mr. Mizrachi, even if criticizing
15 one of them -- one or both of them might be helpful for your
16 defense?

17 DEFENDANT AKHAVAN: Yes, ma'am.

18 MS. LA MORTE: Do you understand that should you go to
19 trial, Quinn Emanuel may refrain from making certain
20 arguments -- well, we are going to trial -- at your trial or at
21 some other proceeding, even though such arguments may be
22 beneficial to you, because of their representation of
23 Mr. Mizrachi and your brother?

24 DEFENDANT AKHAVAN: Yes, ma'am.

25 MS. LA MORTE: So that we are sure that you fully

1 understand these issues, could you describe in your own words
2 your understanding of the potential problems created by Quinn
3 Emanuel's role as your attorney in this case and as counsel for
4 your brother and Mr. Mizrachi?

5 DEFENDANT AKHAVAN: I understand it. We've been
6 through it and had a *Curcio* hearing before, and they explained
7 everything to me, and I -- I'm good with it.

8 MS. LA MORTE: So you do understand that your
9 attorneys may wish to take certain positions in your case that
10 they are unable to take due to their duty of loyalty to
11 Mr. Mizrachi and your brother?

12 DEFENDANT AKHAVAN: Yes, ma'am. He is my brother.

13 MS. LA MORTE: Do you understand that in every
14 criminal case, including this one, a defendant is entitled to
15 assistance of counsel whose loyalty to him is undivided?

16 DEFENDANT AKHAVAN: Yes, ma'am.

17 MS. LA MORTE: Have you had the opportunity to speak
18 with Quinn Emanuel about the conflict of interest issues that
19 have arisen because of their representation of your brother?

20 DEFENDANT AKHAVAN: Yes, ma'am.

21 MS. LA MORTE: And with respect to their
22 representation of Mr. Mizrachi, have you had the opportunity to
23 speak with them about that?

24 DEFENDANT AKHAVAN: Yes, ma'am.

25 MS. LA MORTE: Has Quinn Emanuel informed you that

1 they currently also represent Quantum Solutions?

2 DEFENDANT AKHAVAN: Yes, ma'am.

3 MS. LA MORTE: Has Mr. Rothken informed you that he
4 also currently represents Quantum Solutions?

5 DEFENDANT AKHAVAN: Yes, ma'am.

6 MS. LA MORTE: Are you aware that the government
7 asserts that Quantum Solutions is a subject of the bank fraud
8 conspiracy charge in this case?

9 DEFENDANT AKHAVAN: Yes, ma'am.

10 MS. LA MORTE: And you're aware that Mr. Rothken
11 previously represented Quantum Solutions in civil litigation
12 that involved some of the same allegations as those charged in
13 this criminal case against you?

14 MR. TAYBACK: May I have one moment, your Honor?

15 DEFENDANT AKHAVAN: I'm aware that he sent some emails
16 that may come up in the course of the trial, and it's -- I'm OK
17 with it.

18 MS. LA MORTE: So that is a different issue. Just to
19 be clear, I'm inquiring as to whether you understand that
20 Mr. Rothken had previously represented Quantum Solutions in a
21 civil case that involved some of the same allegations that are
22 at issue in this criminal case.

23 DEFENDANT AKHAVAN: Yes, ma'am.

24 MS. LA MORTE: Has Quinn Emanuel discussed with you
25 their representation of Quantum Solutions?

1 DEFENDANT AKHAVAN: Yes, ma'am.

2 MS. LA MORTE: And has Mr. Rothken discussed with you
3 his current and previous representation of Quantum Solutions?

4 DEFENDANT AKHAVAN: Yes, ma'am.

5 MS. LA MORTE: So previously we discussed the duty of
6 loyalty that an attorney owes a client. Do you understand that
7 Quinn Emanuel and Mr. Rothken both owe a duty of loyalty to the
8 company?

9 DEFENDANT AKHAVAN: Yes, ma'am.

10 MS. LA MORTE: And do you understand that the fact
11 that your attorneys represent both you and Quantum Solutions
12 may lead them to have divided loyalties between yourself and
13 the company?

14 DEFENDANT AKHAVAN: Yes, ma'am.

15 MS. LA MORTE: Do you understand that your attorneys
16 may have an incentive to put the interests of the company
17 before yours?

18 DEFENDANT AKHAVAN: Yes, ma'am.

19 MS. LA MORTE: Do you understand that your attorneys
20 may have learned certain information from their previous or
21 current representation of the company that is beneficial to
22 your defense, if the government doesn't grant permission, your
23 lawyers would be forbidden from using this information when
24 they're representing you?

25 DEFENDANT AKHAVAN: Yes, ma'am.

1 MS. LA MORTE: Do you understand that it may be in the
2 best interests of the company to take certain positions --
3 Quantum Solutions -- to take certain positions or actions that
4 are harmful to your interests in this case?

5 DEFENDANT AKHAVAN: Yes, ma'am.

6 MS. LA MORTE: Do you understand that your attorneys
7 may not wish to take positions on your behalf throughout the
8 very stages of this case that are critical of Quantum Solution,
9 even if criticizing that company may be helpful to your
10 defense?

11 DEFENDANT AKHAVAN: Yes, ma'am.

12 MS. LA MORTE: Do you understand that your attorneys
13 may be limited in making arguments about your level of
14 involvement in the offense, the role in the offense, and your
15 culpability?

16 DEFENDANT AKHAVAN: Yes, ma'am.

17 MS. LA MORTE: Mr. Akhavan, do you understand that you
18 are entitled to an attorney who only has your interests in mind
19 and not the interests of any other person or third party?

20 DEFENDANT AKHAVAN: Yes, ma'am.

21 MS. LA MORTE: Have you received any inducements,
22 promises, or threats with regard to your choice of counsel in
23 this case?

24 DEFENDANT AKHAVAN: No, ma'am.

25 MS. LA MORTE: Do you understand, if you choose to

1 continue with representation by Quinn Emanuel and Mr. Rothken,
2 you're waiving your right to be represented solely by attorneys
3 who have no potential conflict of interest?

4 DEFENDANT AKHAVAN: Yes, ma'am.

5 MS. LA MORTE: And do you agree that if the Court
6 permits you to proceed with Quinn Emanuel and Mr. Rothken, in
7 the event that you are convicted, you will not be permitted to
8 make any argument, on appeal or otherwise, based on the
9 representation of Quinn Emanuel and/or Mr. Rothken and the
10 conflicts or potential conflicts that we've been discussing?

11 DEFENDANT AKHAVAN: Yes, ma'am.

12 MS. LA MORTE: Do you agree to waive and give up any
13 argument of that kind?

14 DEFENDANT AKHAVAN: I do.

15 MS. LA MORTE: Do you wish to consult with -- you have
16 the right to consult with separate counsel if you wish
17 regarding these potential conflicts of interest. Do you wish
18 to do that?

19 DEFENDANT AKHAVAN: No, thanks.

20 MS. LA MORTE: Your Honor, no further questions from
21 the government.

22 THE COURT: All right. Thank you very much.

23 I find that Mr. Akhavan is fully aware of the
24 potential conflicts that have been raised with him and that he
25 has knowingly and voluntarily waived those conflicts. So he

1 can continue to be represented by Quinn Emanuel.

2 Going back to the motions --

3 MS. LA MORTE: Your Honor, there was one more
4 potential conflict, the new potential conflict.

5 THE COURT: Oh, yes. I'm sorry. Go ahead.

6 MS. LA MORTE: I'll turn it over to Mr. Folly for
7 that.

8 MR. FOLLY: Mr. Akhavan, you stated earlier that you
9 are represented by Christopher Tayback and William Burck from
10 Quinn Emanuel, as well as Ira Rothken of the Rothken Law Firm.
11 Is that correct?

12 DEFENDANT AKHAVAN: Yes, sir.

13 MR. FOLLY: Are they retained counsel?

14 DEFENDANT AKHAVAN: Yes, sir.

15 MR. FOLLY: Are you aware that, at trial, certain
16 evidence could be introduced that refers to Mr. Rothken's
17 involvement in negotiations with the company Eaze, regarding an
18 exclusive processing relationship with your company?

19 DEFENDANT AKHAVAN: Yes, sir.

20 MR. FOLLY: Because of this, it is possible that you
21 may wish to advance defense theories that might reflect
22 adversely on Mr. Rothken and he might not want to pursue those
23 theories, because it might reflect adversely on him. Do you
24 understand that?

25 DEFENDANT AKHAVAN: Yes, sir.

1 MR. FOLLY: Because it could create a potential
2 conflict of interest, I wish to advise you of certain matters.
3 You should understand that, under the Constitution and the laws
4 of this country, you are entitled to the aid and assistance of
5 counsel at all times in these proceedings. You are entitled to
6 counsel of your own choice unless there is a strong legal
7 reason for disqualifying that counsel. Do you understand that?

8 DEFENDANT AKHAVAN: Yes, sir.

9 MR. FOLLY: You have the right to the assistance of a
10 lawyer whose loyalty to you is undivided and not subject to any
11 factor that might intrude upon that loyalty. Do you understand
12 that?

13 DEFENDANT AKHAVAN: Yes, sir.

14 MR. FOLLY: Do you understand that because Mr. Rothken
15 might be mentioned at this trial as someone who participated in
16 some of the underlying events that might be discussed at this
17 trial, it creates the potential that he may have interests that
18 may be adverse to your own interests? Do you understand that?

19 DEFENDANT AKHAVAN: Yes, sir.

20 MR. FOLLY: Do you understand that if you proceed with
21 Mr. Rothken, you are waiving any argument as to your sentencing
22 that your lawyers were ineffective or deficient in their
23 representation of you because Mr. Rothken suffered from a
24 conflict of interest by virtue of his involvement in some of
25 the underlying events in this case?

1 DEFENDANT AKHAVAN: Yes, sir.

2 MR. FOLLY: Have you had the opportunity to discuss
3 these conflicts-of-interest matters that I've been asking you
4 about with Mr. Burck and Mr. Tayback?

5 DEFENDANT AKHAVAN: Yes, sir.

6 MR. FOLLY: Are you satisfied with their
7 representation of you?

8 DEFENDANT WEIGAND: I am.

9 MR. FOLLY: Can you please describe in your own words
10 your understanding of the conflict of interest that potentially
11 may arise from Mr. Rothken's representation of you when
12 evidence may be introduced at this trial that refers to his
13 involvement in some of the underlying events in this case.

14 DEFENDANT AKHAVAN: Mr. Tayback and Mr. Burck have
15 explained it to me, and I understand it, and I'm OK with it.

16 MR. FOLLY: Can you explain the conflict in your own
17 words?

18 DEFENDANT AKHAVAN: I understand that Ira, he knows
19 about some agreements and that might cause conflict between him
20 and my interests.

21 MR. FOLLY: And you understand that he may give advice
22 as a result of that that diverges from your own interests?

23 DEFENDANT AKHAVAN: I do.

24 MR. FOLLY: Mr. Tayback, have you discussed the
25 potential conflict of interest with Mr. Akhavan?

1 MR. TAYBACK: I have.

2 MR. FOLLY: Do you feel he understands the possible
3 risks of being represented by a lawyer with a potential
4 conflict of interest?

5 MR. TAYBACK: I do.

6 MR. FOLLY: Is there anything else you would like to
7 ask of Mr. Akhavan here today in this regard?

8 MR. TAYBACK: No.

9 MR. FOLLY: Mr. Akhavan, is there anything that you
10 wish to have explained further to you?

11 DEFENDANT AKHAVAN: No, sir.

12 MR. FOLLY: Do you still wish to proceed with
13 Mr. Rothken as one of your attorneys in this case?

14 DEFENDANT AKHAVAN: Yes, sir.

15 MR. FOLLY: Have you received any inducement,
16 promises, or threats with regard to your choice of counsel in
17 this case?

18 DEFENDANT AKHAVAN: No, sir.

19 MR. FOLLY: Are you agreeing to waive any and all
20 future arguments on appeal or otherwise that you were denied
21 effective assistance of counsel because of the conflict of
22 interest that we discussed with you here today?

23 DEFENDANT AKHAVAN: Yes, sir.

24 MR. FOLLY: Is your waiver of your right to
25 conflict-free counsel voluntary?

1 DEFENDANT AKHAVAN: Yes, sir.

2 MR. FOLLY: No further questions, your Honor.

3 THE COURT: So I find that Mr. Akhavan fully
4 understands this additional potential conflict and has waived
5 any such conflict and may continue to be represented by Quinn
6 Emanuel, et al., throughout this trial.

7 All right.

8 (Discussion held off the record)

9 THE COURT: All right. So we'll continue with the
10 motions in limine.

11 So I was talking about the government's motion in
12 limine no. 2 to preclude evidence or argument regarding federal
13 enforcement of marijuana laws, legalization of marijuana in
14 states and/or countries, and efforts to legalize marijuana
15 federally. And I had granted the latter part, excluding
16 evidence relating to federal efforts to legalize marijuana or
17 to offer safe harbors to the banks. And actually I think the
18 defense has not opposed an exclusion.

19 With respect to the rest, as I was beginning to tell
20 you before, I don't think I can rule across the board at this
21 point. Therefore, before any counsel wants to put a question
22 to the witness related to the federal enforcement of marijuana
23 laws or the legalization of marijuana in certain states and/or
24 countries, they need to ask for a sidebar. We'll take it up at
25 the sidebar at that time.

1 I'm skeptical that this is really stuff that is the
2 subject of testimony. For example, the fact that marijuana is
3 legal in certain states I think is an issue of law, which a
4 party can ask and I take judicial notice of the law for that
5 purpose if it's otherwise relevant. But usually matters of law
6 are not properly a matter of testimony.

7 With respect to the defendant's argument that the
8 federal government ensure the banks that it will not enforce
9 federal law regarding marijuana in states where it was legal
10 and that this is part of their materiality or immateriality
11 argument, are you planning to do that through your own
12 witnesses? It sounds like hearsay to me.

13 MR. TAYBACK: Your Honor, it is certainly through our
14 own witnesses. Our expert -- we have an expert that we
15 proffered, Mr. Gardovan. But more importantly --

16 THE COURT: I don't see how an expert can -- it's a
17 fact matter. It doesn't -- all right. Go ahead.

18 MR. TAYBACK: But I would say, more importantly, I
19 think the whole business at the center of this case is the
20 marijuana delivery service. I think it's reasonable to be able
21 to ask witnesses, some of whom deliver -- continue to work for
22 a company that delivers marijuana. They do so with the belief
23 they're not going to be prosecuted federally.

24 THE COURT: That's a different -- their belief is
25 different, from at least what you said to me. You said in your

1 papers that, quote, the federal government assured the banks
2 that it would not enforce federal law regarding marijuana in
3 states where it is legal. That sounds to me like a hearsay
4 issue.

5 MR. TAYBACK: I do believe it goes to -- and this, I
6 believe, relates to an earlier ruling your Honor made with
7 respect to government's motion no. 4. The standard, I believe,
8 should be whether the allegedly deceptive statement or act is
9 capable of influencing an objectively reasonable bank. Our
10 view is that the knowledge and state of affairs of the banks,
11 as it relates to federal enforcement, influences that equation,
12 certainly is relevant to it.

13 THE COURT: The issue I'm raising is not -- I have
14 some questions about relevancy, but the issue I'm raising is
15 hearsay.

16 MR. TAYBACK: I believe it's not hearsay if it goes to
17 the state of mind of why the banks do what they do and why they
18 don't do other things.

19 THE COURT: Well, we'll see how it comes out. As I
20 indicated, I'm not ruling one way or the other at this time.

21 The next one is government motion in limine no. 3, to
22 preclude evidence or argument that the victim banks purportedly
23 failed to act with sufficient diligence or acted negligently in
24 enforcing policies prohibiting transacting business involving
25 marijuana transaction. That motion is granted.

1 The next one is government motion in limine no. 1, to
2 preclude evidence or argument that the scheme did not cause
3 pecuniary loss. I think I'm going to want further argument on
4 that after we have picked the jury or after I finish the --
5 give you my rulings.

6 The next one is -- again, this is in no particular
7 order -- Mr. Akhavan's motion in limine no. 5 to preclude
8 evidence regarding transaction lines and commercial settlement
9 accounts. That motion is denied.

10 The next one is Akhavan motion in limine no. 4, to
11 preclude the government from eliciting disguised expert
12 testimony from certain witnesses. The details there do not
13 sound to me like disguised expert testimony. So that motion is
14 denied but without prejudice; if there is a particular answer
15 that the parties think goes beyond the pale, I'll reconsider,
16 perhaps.

17 The next one is the government's separate motion,
18 which doesn't have a number, to preclude defendants' various
19 experts and to preclude -- this includes both the three experts
20 for Mr. Akhavan and the two experts for Mr. Weigand. I think
21 that with respect to each of those, some of their testimony may
22 be admissible and some may not. And therefore I think we'll
23 probably need to take, at a break shortly before the first
24 expert is proffered, a sidebar or preferably we can do this
25 simply end of the day before the first expert is offered, to go

1 over in more detail as to what I will permit and what I will
2 not permit in that regard.

3 In that, I should mention, the jury will sit from 9:45
4 to 3:45, in accordance with the pandemic rules of this
5 courthouse. Lucky you, you get to come in at 9 o'clock every
6 morning so we can discuss things like what I just described,
7 and you get to stay who knows how long for the same purpose.
8 So just bear that in mind.

9 The next -- I think I also have real doubts for, just
10 to give an example, about Mr. Artan saying he's going to be a
11 future government employee or something like that. I think
12 that is clearly prejudicial.

13 OK. So, next is the government's motion in limine to
14 admit certain categories of evidence as direct evidence of the
15 defendants' bank fraud conspiracy or, in the alternative,
16 pursuant to Rule 404(b). That motion is granted.

17 The next is the government's motion in limine no. 7,
18 to preclude evidence that the defendants failed to engage in
19 fraud with respect to other merchants and banks. That motion
20 is granted in part. But I think there may be instances where,
21 for example, the defendants seek to show that a document that
22 is being offered pertains to another business rather than Eaze,
23 a legitimate business, that would not be excluded. So that's
24 the line I'm drawing for now.

25 Next we have Weigand's motion in limine no. 4,

1 Akhavan's motion in limine no. 1, and government motion in
2 limine no. 9, all relating to prior arrests, prior convictions,
3 prior bad acts, wealth, and lifestyle.

4 (Continued on next page)

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1 THE COURT: I will grant the defendants' motions
2 regarding the exclusion of evidence relating to wealth,
3 lifestyle, and I don't think I need to reach the question of
4 prior convictions of Mr. Akhavan unless and until the
5 government's case is closed and he tells me he is going to take
6 the stand.

7 In that regard, while I'm thinking about it, while the
8 defense needs to tell me who their witnesses are going to be,
9 they've already given me a list, and also, when we get down to
10 it, who's coming next on any given day, the one thing that
11 defense doesn't have to tell me until the close of the
12 government's case is whether a given defendant will take the
13 stand, but then you have to tell me. If, at that point, it's
14 dependent on a ruling on prior convictions, I will make the
15 ruling then. Before you tell me otherwise, you'll just wait.

16 THE COURT: Mr. Weigand's motions in limine two and
17 three to preclude documents seized from Weigand's laptop, where
18 no witness can testify to their substance or whether there's no
19 evidence to show that Weigand had the evidence on his laptop
20 during conspiracy, generally that motion is denied, but there
21 may be specific items where it's a closer call and it will be
22 taken up at the time.

23 Next, and this is a good example why the broad motions
24 in limine that you guys submitted were perfectly appropriate.
25 Some of these more nitty-gritty things, really, the Court can't

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1 for sure rule on them until the specific testimony is elicited
2 or the specific document is offered. So again, if you know
3 it's been challenged in a motion in limine, you need to alert
4 me to that so that if we have to have a sidebar before we get
5 before get to jury, we'll manage that.

6 Okay. The Weigand motion in limine No. 5 and the
7 related Akhavan motion in limine No. 7 to preclude evidence of
8 Telegram, WhatsApp and ProtonMail, on the current showing, I
9 would grant that motion, but I think that the government may be
10 able to lay an adequate foundation. It's, again, not really
11 possible to give a definitive ruling at this time.

12 And then there is Mr. Akhavan's motion in limine No. 2
13 to exclude Farm Solutions and MasterCard documents produced in
14 response to the grand jury subpoena. That motion is denied.

15 And then there's Mr. Akhavan's motion in limine No. 6
16 to require the government to prove the prerequisites for
17 admission of certain alleged co-conspirator statements outside
18 the presence of jury and prior to admitting such statements
19 into evidence. That motion is denied. Once again, there may
20 be a particularly intricate situation that might arise with a
21 particular piece of testimony settled at the sidebar, but as a
22 general matter, that motion is denied.

23 And finally -- no, not finally. Next, government's
24 motion in limine No. 5 and Weigand's motion in limine No. 6
25 relating to Mr. Weigand's post-arrest statements, I think the

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1 best I can tell you at this point, we can discuss it later
2 today, but is some come in and some don't. So we'll take it up
3 further later.

4 Next, Akhavan's motion in limine No. 3 to preclude the
5 government from referring to victims or to shell or proxy
6 entities, that motion is denied.

7 And finally, government motion in limine No. 6 to
8 preclude the defendants from asserting a presence of counsel
9 defense. Basically, I'm going to deny that motion because I
10 think -- I'm sorry. Actually, I take that back. The problem
11 there is anything that would suggest an advice-of-counsel
12 defense is going to be precluded. So it's really a question of
13 how the question is phrased, and we'll take it up when the
14 question is raised.

15 Okay.

16 (Pause)

17 THE DEPUTY CLERK: Ten more minutes.

18 MS. LA MORTE: Your Honor?

19 THE COURT: Yes.

20 MS. LA MORTE: One additional motion that I don't
21 believe that your Honor has spoken about, and that had to do
22 with the cross of the government's witnesses on certain matters
23 pertaining to, for example, prior drug use and the like.

24 THE COURT: Yes, that motion is granted.

25 MS. LA MORTE: Thank you.

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1 MR. GILBERT: Your Honor, with regard to the motions
2 in limine relating to the negligence of the bank, do I
3 understand your ruling to permit the defense to argue that the
4 issuing banks were --

5 THE COURT: I'm sorry, you need to speak louder.

6 MR. GILBERT: Do I understand the ruling to,
7 nonetheless, permit the defense to argue that the banks were
8 willfully blind, not simply negligent?

9 THE COURT: No. The one motion I wanted to hear more
10 argument on -- and since we've got ten minutes, we may as
11 well -- is the motion, which I know is close to the heart of
12 the defense in this case, regarding that the scheme did not
13 cause pecuniary loss.

14 So let me hear from -- I guess this was the
15 government's motion to preclude evidence or argument that the
16 scheme did not cause pecuniary loss, but let me hear first, if
17 I may, from defense counsel as to what issue they think this is
18 relevant to.

19 MR. BURCK: Thank you, your Honor. Bill Burck, your
20 Honor. Your Honor, we think that the pecuniary loss issue is
21 part of our defense. As the Court recognized in the Circle
22 opinion about the subpoena that the banks didn't care about
23 these transactions, they were immaterial to the banks, and the
24 reason why we think the pecuniary loss issue is important to
25 that is because it's sort of the flip side of the fact that the

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1 banks actually made money, not in the sense of any pejorative
2 sense, but they had fees that they get for processing these
3 transactions.

4 And there's nothing in the evidence to suggest that
5 they didn't get their fees or there was some attendant loss
6 that they suffered by processing these transactions. And to
7 us, that goes right to the core of why the banks don't care,
8 and they know what's going on, and they allow it to happen, and
9 they continue to allow it to happen because --

10 THE COURT: Let me make sure I understand what you
11 expect your evidence will show in that regard. The government,
12 as I understand it, will be introducing evidence that the
13 defendants disguised these marijuana transactions to look like
14 transactions of other goods and services because they believed
15 that the banks would not otherwise process them and that,
16 therefore, they could offer a service to marijuana purchasers
17 who wanted to use credit cards by disguising that.

18 Your defense, so far as it relates to this issue, as
19 near as I can tell is, yeah, that may be what the defendants
20 thought, but they were wrong. Objectively, the banks couldn't
21 care less and, therefore, it was immaterial to them whether it
22 said marijuana or widgets. Do I have all that right?

23 MR. BURCK: Your Honor, I think that's very close to
24 right. I think the only thing I'd add is that -- and it's not
25 a question of willful blindness in the sense of -- it's a

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1 question of they know what's going on and the system is set up
2 by MasterCard and Visa, with the bank's agreement, so that no
3 one ever finds out that it's marijuana. So they know it's
4 marijuana. They know these are marijuana transactions, but
5 there's no coding for marijuana.

6 THE COURT: What's your proof that they knew it was
7 marijuana?

8 MR. BURCK: I'm sorry, your Honor. I couldn't hear.

9 THE COURT: What's your proof that they knew it was
10 marijuana?

11 MR. BURCK: Your Honor, I think there's going to be
12 two sets of proof that they knew it was marijuana. First,
13 there is evidence from the beginning of the alleged scheme in
14 2016 that there were references to the company Eaze, which is
15 the company that is at the heart of the -- that advertised
16 itself as the biggest cannabis marketplace in California. And
17 then after, and this goes to the subpoena that the Court issued
18 an opinion on, that the banks to this day, the issuing banks
19 and the credit card companies, to this day, allow Eaze to use
20 debit cards or allow, I should say, customers to use debit
21 cards with Bank of America and Citibank and everything on those
22 cards, with the Visa logos and everything, to buy cannabis.

23 Openly it says in the statements, and it says to the
24 whole system, that it's Eaze that they're buying these products
25 from.

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1 THE COURT: So that may show that they know now and
2 still don't consider it important, that would go to your
3 materiality, but I don't see how it shows that they knew then.

4 MR. BURCK: Your Honor, there's going to be evidence,
5 we believe, that in the beginning of the scheme, in 2016,
6 that's part of the alleged timeframe here, that there were
7 references to Eaze and products that would clearly put someone
8 on notice they were talking about marijuana; that the period of
9 time in which there was a change to these strange websites that
10 have clearly have nothing to do with marijuana or appear to not
11 be marijuana, is only one piece of this entire timeframe.

12 And so we believe the evidence is going to show that
13 the banks, and certainly the credit card companies, understood
14 that these were transactions that were likely marijuana or were
15 marijuana and, that to this day, they are allowing Eaze to
16 openly process these transactions. And the reason why we think
17 that's important --

18 THE COURT: So why didn't the defendants, under your
19 theory, have any motive to disguise?

20 MR. BURCK: Your Honor, our view is that they didn't
21 have a motive to disguise. We have several defenses, your
22 Honor, on this front. One, we don't think it was our clients
23 that came up with these fake websites. We think it's actually
24 the government's cooperating witness, a man name Oliver
25 Hargraves, not our defendants.

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1 We also think that, again, Visa and MasterCard -- Visa
2 and MasterCard create the codes to allow people to sell
3 whatever they're going to sell over the credit cards. The
4 merchant banks who are accused of being co-conspirators in this
5 whole thing are the ones who assign the codes for the
6 merchants, and our view is that the reason that Visa and
7 MasterCard and the banks don't have a code for marijuana,
8 whereas they do for gambling, your Honor -- they do for illegal
9 gambling; they actually say if you're going to use gambling,
10 there's a code you're supposed to use for it -- is because
11 they're trying to actually say we don't want to know about
12 marijuana, even though we know marijuana is being sold.

13 And it's important that it's happening now, your
14 Honor, from 2020 to this present time because there has been no
15 change in the law, as you know, your Honor, federal law or the
16 State laws that are at issue here that would say, oh, now Eaze
17 and the credit card companies and the banks are allowed to do
18 this. Nothing has changed.

19 It's exactly the same system that was in place before,
20 except now arguably now it's more open. And the reason why we
21 think that's important because it does go right to the
22 materiality question, which is that these banks ultimately
23 don't care at all that these are marijuana transactions. What
24 they're doing, as the Court said in the Circle opinion, is
25 they're giving themselves a fig leaf to say we don't want to be

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1 involved in illegal transactions, whatever that means.

2 And some banks, you'll see, your Honor, in the course
3 of the trial, have policies which are very vague that say,
4 well, we don't want illegal transactions done where they are
5 legal. And they specify gambling, for example; it can be legal
6 in some states and not others. They never talk about
7 marijuana.

8 There's going to be evidence, your Honor, about the
9 dialogue inside the banks, about the fact that they are -- and
10 the credit card companies in that they don't really know what
11 to do with marijuana because there is the federal problem and
12 there are state differences.

13 So, your Honor, in our view, if you look at today, we
14 can link this up and the evidence will show this, back to the
15 beginning of the scheme that there is evidence throughout and
16 now it's open, that Eaze is using debit cards and they used to
17 be credit cards and debit cards, to allow people to buy
18 marijuana and the banks knew.

19 THE COURT: Forgive me for interrupting. Part of what
20 you're saying is why I denied, just a minute ago, the willful
21 blindness question because the assertion here is the banks
22 actually knew, not they were just willfully blind.

23 MR. BURCK: That's correct, your Honor. We don't
24 intend to argue they are willfully blind. We're not intending
25 to argue that it's negligence. We're saying they knew, and the

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1 system is set up so they can have plausible deniability, your
2 Honor. That is our argument. It's not that --

3 THE COURT: All right. That's very helpful. Did
4 co-counsel for the other defendants want to add anything to
5 that?

6 MR. GILBERT: Yes, your Honor. I would like to be
7 heard on the question your Honor raised about pecuniary harm,
8 and we think it's certainly relevant to show the intent of the
9 defendants and to show their good faith with. We requested and
10 we think we're entitled to a good-faith instruction, and we
11 certainly believe that the evidence will show, with regard to
12 Mr. Weigand, that he had no intention to harm any bank in this
13 country, and that is a perfectly legitimate line of argument
14 that we intend to pursue and we think is consistent with the
15 law.

16 THE COURT: Well, if you recall from my opinion on the
17 motions to dismiss, I think I take a somewhat different view of
18 harm than you do as to what the law requires or doesn't require
19 in that regard. Putting aside the whole argument that's just
20 been made about the banks' actual knowledge, if the banks, in
21 fact, decided we're not going to process marijuana transactions
22 because we don't want to take on the risk that we might get
23 prosecuted or in trouble or litigated if we do, and your
24 clients then, in order to obtain money and property from the
25 banks, then disguise the true nature of the transactions, I

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1 think that meets the harm requirement.

2 MR. GILBERT: Our defense, your Honor, is that -- in
3 part, that there will be no evidence that Mr. Weigand had any
4 such intent or knowledge with regard to -- and so that's an
5 essential element of our defense. I take it from your nodding
6 that you deem to be an appropriate line of --

7 THE COURT: All right. Let me hear from the
8 government.

9 MR. FOLLY: Thank you, your Honor. The government's
10 argument, fundamentally, is that pecuniary loss is simply not
11 an element of this case. It's also not a theory that the
12 government is advancing at trial here.

13 THE COURT: To me, it seems to me that if it's
14 permissible at all, it is linked solely to the issue of
15 materiality. The argument is the banks really knew what was
16 going on, but they didn't care because they got their money.
17 And why isn't that then admissible?

18 MR. FOLLY: Your Honor, I think that in the context of
19 this case, it really is a fact that the defense is using to try
20 to essentially tell this jury, like, there wasn't -- no one got
21 harmed; so there wasn't a crime.

22 THE COURT: I understand, if your argument is a 403
23 argument, that it's relevant to materiality, but the prejudice
24 outweighs the relevance because they can, without even ever
25 mentioning that, they can argue the bank knew and here's why

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1 you should find the bank knew. That, I understand. But I
2 don't understand any argument about this being irrelevant. So
3 if this is a 403 argument --

4 MR. FOLLY: Particularly here, yes, your Honor, and
5 particularly in this case, where the government is not alleging
6 that the banks lost money on these transactions, it's not part
7 of the theory. It's only about --

8 THE COURT: Yes, so I think -- I will think about this
9 a little bit more before, but I want to give you a ruling,
10 obviously, before opening statements. I think the 403 issue is
11 a real one but can be handled by an instruction to the jury,
12 and I had asked each side to submit a preliminary instruction
13 that I can give to the jury before the end of this week
14 flagging, as I do in almost every trial now, flagging that here
15 are some of the issues you should be thinking about.

16 And I think that might be an opportune time to tell
17 them what the government is required to prove, which is that
18 they don't have to prove any loss of money by the banks. I
19 don't think I get into more detail than that at a preliminary
20 instruction. So I'm inclined to let it in, but I'll think
21 about it.

22 Were there further things you wanted to say? I'm
23 sorry.

24 MR. FOLLY: Your Honor, on that point, if your ruling
25 is that it's allowed in with the instruction that you're

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1 contemplating, we would just ask for a ruling that that fact,
2 pecuniary harm to the banks, can only be argued in connection
3 with the defense theory on materiality --

4 THE COURT: Absolutely.

5 MR. FOLLY: -- and notice.

6 THE COURT: And that I feel fairly strongly about,
7 with respect to all these motions in limine, if someone says to
8 the Court, from any party, this is coming in on theory X, and
9 then they try to suggest it for theory Y, you will not be happy
10 campers when you do that because, sua sponte, I will say
11 something very unpleasant to the jury about how you were
12 forbidden to do that and you've now violated my ruling.

13 So no one should try any trick like that, but I'm sure
14 we have very competent counsel here. I'm sure that won't
15 happen. So that sub-motion is granted. It will be only coming
16 in for the limited purposes related to materiality.

17 Okay. Linda?

18 MR. BURCK: Your Honor, I just had two questions.
19 Sorry, your Honor.

20 THE COURT: Let me just find out what the story is
21 with the jury.

22 (Pause)

23 THE DEPUTY CLERK: Ten minutes.

24 THE COURT: That's what they told us ten minutes ago.

25 THE DEPUTY CLERK: Yes.

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1 (Pause)

2 THE COURT: All right.

3 MR. BURCK: Your Honor?

4 THE COURT: Yes. I'm sorry, there were two people
5 that were about to talk, but you were first, I think.

6 MR. BURCK: Thank you, your Honor. I just had two
7 clarifying questions relating to your rulings on the motions
8 this morning. First, I understand I believe the reasonableness
9 motion to grant. Understood, your Honor.

10 We are -- I am planning to open, your Honor, very much
11 on the "don't care." I'm not going to mention reasonable
12 banks. I'm going to say: These banks didn't care. I assume
13 that's okay?

14 THE COURT: Yes.

15 MR. BURCK: And that doesn't cross the line?

16 THE COURT: Yes.

17 MR. BURCK: I just wanted to make sure. I will not
18 mention the word "reasonable."

19 THE COURT: That's your defense, and given my rulings,
20 you can certainly present that defense.

21 MR. BURCK: Thank you, your Honor.

22 And then the second question is, I don't believe the
23 government opposed or moved to limit references to the fact
24 that marijuana is legal in California and Oregon for purposes;
25 so I assume we can say that, your Honor? We're not going to go

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1 beyond that.

2 THE COURT: Yes. Yes, I was really looking more at
3 that from an evidentiary standpoint. It looked like there was
4 going to be some testimony about that, and that sounded like an
5 issue of law. And the only person who can testify about law is
6 me; so that was the only nuance. But I assumed that both sides
7 are in agreement that the jury can be informed that the sale of
8 marijuana is legal, so far as state law is concerned in those
9 two states.

10 MR. BURCK: Thank you, your Honor.

11 MR. GILBERT: We intend to open with a statement that
12 I described before, that there will be no evidence that
13 Mr. Weigand had any intent to cause harm to a U.S. bank,
14 pecuniary or otherwise.

15 THE COURT: Well, that's certainly -- you know, intent
16 is an essential element of the crime; so you certainly can open
17 on denying that the government can prove intent.

18 MR. GILBERT: Thank you.

19 THE COURT: The government had something else?

20 MR. FOLLY: Your Honor, defense counsel for Weigand
21 has proposed certain demonstratives to use in their opening
22 that the government has an objection to.

23 THE COURT: Yes, let me see them. Supposedly, you're
24 not supposed to hand paper exhibits. However, both my law
25 clerk and me have been double vaccinated; so we will take the

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1 risk.

2 Okay. So let's take these one at a time. The first
3 is entitled "Status of Eaze in January 2018;" although, it also
4 includes a nice photo of Mr. Weigand and a little reference to
5 his home in Germany. But the main emphasis is, I'll read it:
6 "Eaze was a silicon valley company with sophisticated U.S.
7 investors." What's the relevance of that?

8 MR. GILBERT: It goes, your Honor, to Mr. Weigand's
9 understanding when he was first introduced to this situation
10 involving Eaze. What was the information available to him was
11 that it was a U.S. company with sophisticated investors that
12 had been operating, accepting credit cards for some period of
13 time, a lengthy period of time before he even got involved; so
14 from his perspective, there was no reason to think that this
15 there was anything wrong.

16 THE COURT: At best, that is only slightly relevant,
17 and it shouldn't be part of a demonstrative; so take out that
18 part.

19 MR. GILBERT: Respectfully, your Honor, it goes to his
20 state of mind and --

21 THE COURT: Well, I don't think so at all. First of
22 all, here you're asserting a fact. You don't say in your chart
23 Weigand believed X, Y or Z. You say Eaze was a Silicon Valley
24 company with sophisticated U.S. investors. How are you going
25 to prove that?

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1 MR. GILBERT: That, we think, will certainly come out
2 in testimony of the various Eaze witnesses who will be
3 testifying at trial, and it's in the discovery material.

4 THE COURT: What do you mean by sophisticated U.S.
5 investors, as opposed to simple barefoot investors?

6 MR. GILBERT: I don't think they were barefoot, your
7 Honor. In 2017 I believe it was \$50 million of venture capital
8 funds invested in Eaze; so I think the --

9 THE COURT: I'm still mystified as to why you think
10 this proves anything about intent.

11 MR. GILBERT: In our view --

12 THE COURT: Because your argument is sophisticated
13 investors don't break the law?

14 MR. GILBERT: From our client's perspective, yes.
15 That from what was available then, this was basically --

16 THE COURT: What planet?

17 MR. GILBERT: -- America being presented to him. It
18 this was a sophisticated company with sophisticated backers
19 that had consultants that were out of Visa and MasterCard. So
20 there was no reason for him to believe, walking into this, that
21 this was a situation that would ever involve all of these
22 people agreeing to violate U.S. law. That will be the evidence
23 of what was the information that was available to him that goes
24 directly to what his state of mind was, what his intent was in
25 agreeing to do anything in connection with Eaze and --

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1 THE COURT: All right. Is there any other objection
2 to the first?

3 MR. FOLLY: Your Honor, I think a similar objection to
4 all of the charts is that it's the way that they're put
5 together and the things that are listed in them. Among other
6 objections is they're argumentative and also seem to be --

7 THE COURT: They're argumentative? Oh, my gosh. I've
8 never heard a presentation from any lawyer on opening
9 statements that is argumentative. So the government, since
10 they don't want argumentative openings, is not going to say:
11 We think we can prove this beyond a reasonable doubt this guy
12 is guilty as sin, or anything like that, because you don't
13 believe that argument can be part of opening statements? Come
14 on, counsel. Give me a break.

15 MR. FOLLY: Your Honor, the other additional issue
16 with these slides, particularly the way that Mr. Gilbert just
17 framed them, is that they are entirely about what the
18 defendant's state of mind, which unless the defendant --

19 THE COURT: It's part of --

20 MR. FOLLY: -- unless the defendant is testifying --

21 THE COURT: Pardon?

22 MR. FOLLY: Unless the defendant now is committing to
23 testifying.

24 THE COURT: Oh, my gosh. How long have you been a
25 prosecutor?

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1 MR. FOLLY: Your Honor, I've been a prosecutor nearly
2 five years.

3 THE COURT: So is this your first fraud case?

4 MR. FOLLY: No, your Honor. It is not.

5 THE COURT: So are you not aware of the law of the
6 United States that has existed since at least 1800 that the
7 government has to prove every essential element, including
8 intent, beyond a reasonable doubt?

9 MR. FOLLY: Your Honor, I'm very aware of that. The
10 concern with this slide is simply --

11 THE COURT: I think what your argument is, you're
12 saying, and I think it's only the first chart, that it relates
13 to, you're saying -- you're arguing there are things in the
14 first chart that can only come into evidence if the defendant
15 testifies because there will be no other source.

16 Now, that clearly is not true with respect to
17 "marijuana was recently legalized in California for
18 recreational use." That is clearly not true, for Eaze was
19 already accepting Visa, MasterCard since 2016. They expect to
20 be able to deduce that even through the government's witnesses.

21 MR. FOLLY: I agree with that, your Honor.

22 THE COURT: And the only one I'm having trouble with
23 is the first one, Eaze was a Silicon Valley company with
24 sophisticated U.S. investors. I understand the whole point of
25 this chart is to say here was this simple, honest businessman

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from Germany, where people in Germany don't know anything about American investments and here they did, this poor fellow got roped into this terrible situation because, and then he goes through his three items. And that's -- you know, far be it for me to preclude an argument of that sort.

I'm going to -- I want to go back to defense counsel. How do you propose, without your client taking the stand, to show that he knew that Eaze was a Silicon Valley company with sophisticated U.S. investors? Because unless you can show -- that's the relevance. This whole first chart goes to intent. The other things you can show without, but how are you going to show that he knew that without his taking the stand?

MR. GILBERT: Can I have one moment, your Honor?

THE COURT: Yes.

(Pause)

MR. GILBERT: Primarily, I think there will be -- well, I'll answer directly the question you've asked.

THE COURT: That's always a good idea.

MR. GILBERT: One way of doing that is through cross-examination of the government's cooperating witness, who met with Mr. Weigand and described Eaze and described the background of this entire situation. So we expect he will not quibble with the fact that he understood and described that Eaze was a Silicon Valley company. I don't think there's any debate about that, and it had sophisticated U.S. investors, it

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1 had venture capital backing. That will certainly be -- there
2 will certainly be evidence of that.

3 And so for those reasons, I think it's entirely
4 supportable that we'll be able to show that that should be a
5 relevant consideration as to this individual's intent and what
6 his state of mind was about Eaze in general. It wasn't a
7 secret. I mean, there were billboards outside the airport in
8 Los Angeles that had Eaze on them, and his post-arrest
9 statement, which I understand your Honor hasn't made a ruling
10 on, but if those statements come in, he discusses that, which
11 shows that it was very well known --

12 THE COURT: All right. Forgive me for interrupting.
13 I'll think a little bit more about the first chart. The second
14 chart, only U.S. banks are covered by the bank fraud statute.
15 You may be entitled to an instruction of law at some point; so
16 but it's not for opening statement so that chart is excluded.
17 That chart is excluded.

18 The next chart, Eaze payment processing 1.0, what's
19 the point of this?

20 MR. GILBERT: This is demonstrative to help the jury
21 visualize a simple point, which is that Eaze was using payment
22 processing through New York, through the same merchant banks
23 that were involved in a later time, when Mr. Weigand had some
24 involvement, but that had been going on in 2016 and 2017
25 through this company called Clear Settle that's depicted here.

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1 At that point, Mr. Weigand had nothing to do with it.
2 He only got involved starting with January 2018, what we refer
3 to, for simplicity sake, is Eaze processing version 1.1 --
4 that's how we'll describe it in opening for the jury -- so that
5 they understand clearly that that's when his connection to this
6 began.

7 And all of this was going on before he got involved,
8 which I think is critical to help the jury understand that
9 despite what we expect the government to say, that he was
10 some -- Mr. Weigand was some critical link to Europe --

11 THE COURT: How are you going to prove that he knew
12 that without his taking the stand?

13 MR. GILBERT: We'll be able to establish through
14 cross-examination of the government's cooperating witness that
15 there was a description of what had been the payment processing
16 that had been in place before, and the whole purpose of the
17 meeting that takes place in January of 2018 is to discuss and
18 to explain, in part, to Mr. Weigand what they were hoping to do
19 to change the already existing payment processing that Eaze was
20 doing.

21 THE COURT: And then your last chart is Ruben
22 Weigand's focus was on Europe, and how are you going to prove
23 that without his taking the stand?

24 MR. GILBERT: Through voluminous -- I shouldn't say --
25 there are voluminous chats being entered into evidence. The

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1 communications in which Mr. Weigand was involved, which is a
2 small subset of all of those, I think will clearly demonstrate
3 what we've said here, which is that his focus was on dealing
4 with European merchant banks and opening European accounts, all
5 of it was focused on Europe.

6 THE COURT: All right. Let me --

7 MR. GILBERT: And in part, that is what the
8 government, as we understand it, is alleges his role to have
9 been.

10 THE COURT: Let me ask the government. The
11 representation is that they will be able to prove everything
12 that's on these charts independently of his taking the stand.
13 Of course, if that proves to be false, you are free on
14 summation, or anything else that anyone else says on opening
15 statement that isn't proved get up, and say: Remember when he
16 said that he was going to show that? You haven't heard one
17 word about that.

18 I will also instruct the jury, as I always do, that
19 nothing that any counsel says on opening argument is evidence.
20 But having said that and given the representations, putting
21 aside the second chart which I'm excluding, the one about all
22 the U.S. banks are covered by the bank fraud statute, any
23 remaining objection to the other three charts?

24 MR. FOLLY: Your Honor, one concern with respect to
25 the Eaze payment processing 1.0 chart, for some reason, the

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1 chart ends in 2018. I think it is a misleading
2 characterization of what this case is about. It's a conspiracy
3 charged through 2019. It involves --

4 THE COURT: What about that, counsel? I'm sorry.
5 Counsel for Weigand, what about the claim is that this is
6 misleading because it limits itself to a period before the key
7 events in this case?

8 MR. GILBERT: The purpose of the chart is simply to
9 depict when Mr. Weigand got involved.

10 THE COURT: Yes.

11 MR. GILBERT: And that's all this shows. So it
12 doesn't purport to state that anything started in '18 and was
13 over at the end of '18. So we can adjust it to add another
14 extension of it, but the whole point of it is not -- is a
15 simple one, which is he wasn't involved --

16 THE COURT: I'm going to, on the representations made,
17 I'm going to allow all the charts except the one about only
18 U.S. banks are covered by the bank fraud statute. It will be a
19 good test of the credibility of counsel to see whether this, in
20 fact, comes into evidence independent of the defendant taking
21 the stand.

22 MR. GILBERT: Your Honor?

23 THE COURT: Now, yes?

24 MR. GILBERT: I'm sorry. With regard to the -- and I
25 understand your ruling about the demonstrative, but the concept

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1 which we would like to touch upon in the opening, and it's
2 critical to our defense, is that what Mr. Weigand's role was,
3 as the government I think agrees, related to merchant banks in
4 Europe. I think there's a risk here that the jury is going to
5 be somewhat confused with various financial institutions, Visa,
6 MasterCard, various different banks in Europe. And it is
7 critical that we be able to explain to them that the
8 specific --

9 THE COURT: How is your chart, even as a matter of
10 law, because doesn't deal with indirect relationships which
11 are, of course, part of what was involved here. So I think
12 it's misleading. I continue to exclude it.

13 All right. Now, we're going down -- I'm sorry, yes?

14 MR. FOLLY: Your Honor, just one additional concern
15 about the way Mr. Gilbert articulated the argument or principle
16 that they intend to use in their opening about Weigand's not
17 having any intent to cause harm. Your Honor, I think that
18 comes dangerously close to intent to cause the banks pecuniary
19 loss, and we are articulating a very narrow allegation with
20 respect to harm, which is depriving the banks of their
21 property --

22 THE COURT: We're going to deal with that in the
23 preliminary instruction I'm going to give later this week. I
24 think that will be sufficient, but thank you for raising it.

25 Now, the parties, their counsel and the marshals are

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1 going to enter the jury room through the entrance that says
2 "closed," the one right near the elevators, and I will go down
3 there as well, and then we will pick the jury. All right. So
4 I'll meet you down there forthwith.

5 (Recess)

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1 A F T E R N O O N S E S S I O N

2 1:30 p.m.

3 (Jury not present)

4 THE COURT: Anything counsel needs to raise with the
5 Court?

6 (Jury present)

7 THE COURT: I want to remind counsel and the parties
8 that you need to stay in exactly where the marker is for your
9 seats. There was some movement earlier this morning between
10 various people that unfortunately is not permissible because of
11 the pandemic requirement social distancing. So just be sure
12 you keep in your seats.13 OK. Ladies and gentlemen, we are about to hear
14 opening arguments of counsel. I want to caution you at the
15 beginning that nothing that counsel says is evidence. The
16 evidence will come, as I mentioned downstairs, from testimony,
17 and it will be from this little box here next to me. And the
18 witnesses can remove their mask because this is designed to
19 allow that.20 It will come from documents, which you will see on
21 your screen. And at the very end of the case we will give you
22 a thumb drive or some equivalent so you can access any and all
23 documents as well as an exhibit of the documents.24 And occasionally there may be what's called a
25 stipulation where the parties agree on a particular fact, and

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Opening - Ms. Deininger

1 you can take that as evidence as well.

2 Those are the only sources of evidence. Nothing that
3 counsel says, nothing that I say is evidence.

4 So why do we have opening arguments at all? The
5 reason is because the evidence, as again I mentioned before, is
6 going to come in one little bit at a time, and it may be a
7 while till you see the whole picture. So opening statements
8 are the opportunity that's given to counsel to give you a
9 preview of what they expect the proof will show, or will fail
10 to show, as the case may be. So it's kind of an overview.

11 Each side gets a half -- each party gets a half hour.
12 So the government will have a half hour. Then each of the
13 defendants will have a half hour.

14 The government goes first because, as I mentioned
15 earlier, the burden of proof is always on the government. The
16 defendants are presumed innocent until and unless the
17 government has proven that they are guilty beyond a reasonable
18 doubt. So for that reason the government gets the opportunity
19 to open first, because they have the burden of proof.

20 So we'll begin with the opening statement from the
21 government.

22
23 And you can take down your mask too. That box is also
24 designed to allow you to take down your mask.

25 MS. DEININGER: I'm sorry. Can everyone hear me?

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Opening - Ms. Deininger

1 THE CLERK: I'm sorry. I have to change the
2 microphone cover. Sorry, everybody.

3 MS. DEININGER: These two men, Ray Akhavan, Hamid
4 Akhavan, and Ruben Weigand, for years, they built a business of
5 lies, in exchange for millions of dollars. They offered a
6 unique set of services creating fake companies, fake products,
7 fake websites, and even ginning up fake web traffic for those
8 websites, all in the service of pushing money through U.S.
9 banks for illegal products. With that multilayered web of lies
10 they duped the banks into approving more than \$150 million in
11 debit and credit card transactions. That's why we're here
12 today, because these two men, they made it their business to
13 commit bank fraud.

14 So let's talk about what the evidence is going to
15 show. You're going to learn that from 2016 to 2019, the
16 defendants made millions tricking U.S. banks into approving
17 illegal purchases.

18 I'm going to explain how the defendants pulled this
19 off. But before I do that, I want to talk to you about two
20 things that I think you're going to hear a lot about at trial.
21 The first thing that you're going to hear a lot about is the
22 companies the defendants were paying to lie for, their clients,
23 a company called Eaze. Eaze was a marijuana delivery company.
24 It had an online application that its customers in California,
25 where marijuana is legal under state law, could use to order

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Opening - Ms. Deininger

1 marijuana products from marijuana dispensaries and have them
2 delivered to their door. Eaze marketed itself as a mover of
3 product. But Eaze wanted to give its customers the option to
4 use credit and debit cards. And Eaze had a problem with that.
5 The credit companies and many U.S. banks don't allow debit and
6 credit cards to be used to purchase marijuana, because those
7 purchases are still illegal under federal law. And that's
8 where defendants came in. The defendants offered these and the
9 marijuana dispensaries a solution, a solution of tricking the
10 U.S. banks and card companies. These marijuana dispensaries
11 hired defendants to get around the bank and credit card rules.
12 And how did they do that? They lied. The defendants created
13 layer upon layer of lies to disguise the transactions and make
14 them look like they were for other legal things.

15 The second thing that you're going to hear a lot about
16 at this trial are the credit card networks and the rules that
17 govern them. Defendants' exploitation of these networks was
18 the heart of the scheme.

19 So who were the players in these networks? Visa and
20 MasterCard are at the center of these networks. They set rules
21 that the banks have to follow. Then there are the merchants.
22 These are the companies selling something; take Target or
23 Starbucks. In this case, Eaze and the marijuana dispensaries,
24 they were the merchants. The merchants work with merchant
25 banks, that are sometimes also called acquiring banks. If a

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Opening - Ms. Deininger

1 merchant wants to accept credit and debit cards, it has to have
2 a bank account. Without that, their customers would have to
3 pay in cash.

4 Then on the other side you have cardholder banks, or
5 issuing banks. They offer credit and debit cards to the
6 public. For example, you might have a Bank of America
7 MasterCard credit card, or a Wells Fargo Visa debit card.
8 Cardholder banks have their own rules about how their cards can
9 be used and what transactions they will approve.

10 So the rules of the cardholder banks and Visa and
11 MasterCard, those rules, those rules that you can't use the
12 cards for illegal purchases, including marijuana, the
13 defendants decided to make money breaking those rules. And to
14 do that, they lied, and lied again.

15 Now let me tell you a little bit about the
16 step-by-step of how defendants ran their scheme. Step one.
17 They bought shell companies with no connection to Eaze or the
18 marijuana dispensaries' actual business. For example, they
19 bought a shell company called Linebeck Ltd.

20 Step two. They used the shell companies to give bank
21 accounts to overseas merchant banks. The bank account
22 applications were full of lies. They lied about what the
23 companies sold, where the companies were located, and who
24 controlled them. The bank account application for Linebeck
25 Ltd., it said that Linebeck was a British company selling face

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Opening - Ms. Deininger

1 cream off a website called organicals.org. It wasn't. That
2 was all lies.

3 Step three. The defendant used the fake merchants and
4 the overseas merchant bank accounts to hide transactions in the
5 Visa and MasterCard network. So, for an example, when an Eaze
6 customer uses a Visa credit card to purchase marijuana from
7 Eaze, instead of listing Eaze or one of the marijuana
8 dispensaries as the merchant, it would show up as a transaction
9 for organical face cream.

10 What was the point of all this deception, of the fake
11 products or the fake companies? It was to deceive. It was to
12 prevent the banks and credit card companies from understanding
13 the true nature of the transactions that the defendants were
14 pumping into the U.S. financial system.

15 And for a while the scheme worked. The purchases were
16 approved and the cardholder banks sent money to the companies
17 that they thought were the real merchants.

18 Now, because these banks and credit card companies
19 don't allow marijuana transactions, the defendants had to cover
20 their tracks. They knew the fake merchants had to look like
21 real businesses. So they set up fake websites for those fake
22 companies, websites that appeared to be selling things, like
23 face cream, dog products. They even carted in water. They
24 even paid someone to generate fake traffic to those websites so
25 that, to an investigating bank, it would look like customers

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Opening - Ms. Deininger

1 are actually visiting it.

2 And that wasn't all. They did everything they could
3 to make sure they could not get caught. They also told the
4 marijuana dispensaries to open up bank accounts in names that
5 couldn't be linked back to the actual marijuana business. Lies
6 at every level.

7 The cardholder banks, like most people, they wanted to
8 know who they were actually doing business with. But the
9 defendants took that option, the option of knowing the truth,
10 away from them. They tricked the banks into approving
11 thousands and thousands of transactions for more than \$150
12 million, money that came out of the cardholder banks' own
13 accounts based on lies.

14 So that is the scheme. That's how it worked.

15 Let me tell you about the critical role that each of
16 these defendants played in running the scheme. It started with
17 Hamid Akhavan, or Ray, as they called him. Akhavan, plain and
18 simple, was the leader of the fraud scheme. He oversaw
19 everything. He hired a team to purchase the shell companies
20 and set up the fake websites for the fake merchants.
21 Eventually you'll learn that he brought Ruben Weigand into the
22 scheme. Weigand had connections to insiders at the overseas
23 merchant banks. He helped make sure the merchant bank accounts
24 got opened and that the accounts didn't later get flagged and
25 shut down.

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Opening - Ms. Deininger

1 He also played a critical role of arranging to get the
2 moneys moved from the overseas merchant bank accounts back to
3 the marijuana dispensary in the United States.

4 And as a result of all of this fraud and lies, the
5 defendants are charged together with one count of conspiring to
6 commit bank fraud.

7 OK. So now you have a sense of what this case is
8 about. I want to tell you how we're going to prove it. The
9 evidence will come in several forms. You'll see the emails and
10 documents that law enforcement agents recovered from Weigand's
11 computer that was with him at the time he was arrested, bank
12 account applications for the bank merchants, a ledger full of
13 profit calculations, and all of the other paperwork needed to
14 keep the defendants' fraud running. There will be financial
15 records, records of the rules prohibiting illegal transactions,
16 records that show the thousands of purchases that were
17 processed in the state merchants' names, and records showing
18 how the defendants sent money for the marijuana purchases after
19 taking out their sizeable cut from the overseas merchant banks
20 back to the marijuana dispensaries.

21 You'll also hear from witnesses. You'll hear from the
22 cardholder banks who approved these purchases based on the
23 defendants' lies. They will tell you that it is essential to
24 their business that they receive true and accurate information
25 when deciding whether to approve card transactions. And they

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Opening - Ms. Deininger

1 will tell you that they would not have approved these
2 transactions if they had known they were really for marijuana.

3 You'll hear from credit card companies, who will
4 explain how their networks operate, the rules for those
5 networks, and what they do to make sure those rules are
6 followed. You'll learn how MasterCard eventually found out
7 about the defendants' scheme and quickly moved to begin
8 shutting it down. You'll hear from the law enforcement agent
9 who arrested Weigand. You'll hear the stories Weigand made up
10 when he was caught and how he lied and claimed he had never
11 been involved with Eaze, how he pretended that he had learned
12 about Eaze from seeing it on a billboard.

13 You're also going to hear from some of the people who
14 committed the bank fraud along with the defendants. They will
15 be able to give you the inside view of how the scheme operated.
16 You're going to hear from several people who worked at Eaze,
17 including the former CEO. He will tell you how getting credit
18 cards up and running was critical to Eaze. He will tell you
19 how other credit card processors told Eaze that it couldn't be
20 done for marijuana transactions in the United States. He will
21 tell you how Eaze ended up having to work with the defendants,
22 who charged fees that were far higher than normal. And he will
23 tell you that Akhavan justified those fees by explaining that
24 he and his associates were taking on a serious threat, the
25 threat that they would get caught.

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1 You're also going to hear from someone who set up the
2 fake merchants for defendants. You'll hear how he bought shell
3 companies that existed only on paper, created websites for
4 those fake merchants, and then generated fake online traffic to
5 those websites. You'll hear how he pulled together the bank
6 account applications for the fake companies, full of lies. And
7 you'll hear about the meetings he attended with Akhavan,
8 Weigand, and other members of the scheme, meetings where they
9 planned out how the scheme would function.

10 Now, I want to be clear. These people, these
11 individuals, have also committed crimes. That fake website
12 creator and Eaze's former CEO are testifying because they have
13 pled guilty and entered into cooperation agreements with the
14 government requiring them to testify. And they hope to receive
15 leniency at sentencing for doing so. So you should scrutinize
16 their testimony carefully. You should ask yourselves, how does
17 that testimony match up with all of the other evidence in this
18 case, evidence like the fake merchants and the lies in the bank
19 account application, the records showing the banks' rules and
20 the thousands of transactions that broke those rules, evidence
21 like the defendants' own words, their words. You'll see their
22 words, in emails, in phone messages, explicitly discussing the
23 fraud scheme; their words planning the fake merchants, the fake
24 websites, and the fake website traffic, and the bank accounts
25 for the shell companies; their words expressing their fears

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Opening - Mr. Burck

1 about the truth being found out and everything they could do to
2 hide the truth so they might continue to make their millions
3 selling lies after lies.

4 All of this evidence ultimately is about one simple
5 thing. It's about two men who built a business out of a
6 mountain of lies, lies designed to get illegal purchases
7 approved by U.S. banks.

8 Now, I'm going to sit down, but before I do, I want to
9 ask you to do three things. First, pay close attention to the
10 evidence. Second, listen to Judge Rakoff's instructions about
11 the law and follow them. And, third, use your common sense
12 when examining the evidence and listening to the witnesses. If
13 you do those three things, you'll reach the only conclusion
14 that is consistent with the evidence, the law, and that common
15 sense: the defendants are guilty.

16 THE COURT: Thank you very much.

17 Which defendant wants to go first?

18 MR. BURCK: Your Honor.

19 Good afternoon, your Honor. Good afternoon, ladies
20 and gentlemen of the jury.

21 Who are the supposed victims of the credit card fraud
22 scheme the prosecutor just told you about? It's not the card
23 holders. It's not the regular people who have credit cards or
24 debit cards, who use them to make purchases, including
25 sometimes for marijuana. This case isn't about card holders

L31AWEI3ps

Opening - Mr. Burck

1 getting scammed or having their credit card numbers stolen or
2 anything like that. The victims are not the other side of
3 these marijuana sales. It's not the small mom-and-pop
4 dispensaries who worked through Eaze to sell marijuana to
5 willing buyers. No one is going to say they were scammed or
6 tricked out of anything. No. The victims in this case,
7 according to the government, are banks, big banks like
8 Citibank, Bank of America, and Wells Fargo. Those are the
9 victims. Multibillion dollar banks. Sophisticated.

10 The prosecutors claim the banks are victims of bank
11 fraud because they supposedly had policies against permitting
12 people to buy marijuana using credit cards or debit cards
13 issued by the banks under the Visa and MasterCard logos. These
14 policies, the prosecutors say, are taken very seriously by the
15 banks because marijuana remains illegal under federal law.
16 Sounds pretty simple, pretty straightforward. But when you
17 hear the evidence in this case, it will not be so simple. You
18 will learn that marijuana sales remain illegal under federal
19 law, but they are legal under California and Oregon law, where
20 these transactions occurred. They are lawful under those state
21 laws.

22 The sales that occurred in this case happened in
23 California and Oregon. There's where the people were located
24 who were buying the marijuana, and that's where the
25 dispensaries were located that were selling the marijuana.

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Opening - Mr. Burck

1 That's where Eaze, the company you heard about, the
2 marketplace, was located.

3 You will also learn that the credit card processing
4 systems are set up by the credit card companies, by Visa and
5 MasterCard, and by the banks, to conceal, to hide, the truth
6 that the banks know full well that their card holders are
7 buying marijuana with their credit cards and their debit cards.
8 The system is set up to hide the fact that they know. The
9 system is designed and set up by the credit cards and the banks
10 to give them plausible deniability, plausible deniability that
11 credit card holders are using these cards to buy marijuana.

12 You're also going to learn that the credit card
13 companies and the banks could easily, could easily, set up a
14 system to block marijuana transactions if that's what they
15 really wanted to do. But they haven't. And they continue, to
16 this day, to this day, to permit flourishing online sales of
17 marijuana using debit cards, to this day.

18 And the reason, you'll learn, that the banks, who the
19 prosecutors claim were somehow defrauded, allow this is because
20 the reality is they just don't care that their card holders are
21 using the cards to buy marijuana, so long at least as it's
22 legal under the state laws in which the sellers and the buyers
23 are located. They don't care.

24 And you will hear evidence that the credit card
25 companies and the issuing banks earn fees, they earn money,

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Opening - Mr. Burck

from these transactions, just as they do for any other credit card transaction that they sponsor. They make money from these transactions. And you also will not hear, despite the government saying \$150 million taken from banks, you will not hear any evidence that these banks lost a dime from this alleged scheme. No wonder the banks don't care. They didn't lose any money. And they've made money off of these transactions.

These policies pay lip service to blocking illegal transactions. We'll talk about what that means. But their actions, the banks' action show their number one priority was making sure their customers can use their cards to buy goods, including marijuana, if it's permitted under state law, any goods those customers want to buy. Banks are businesses. We all know that. And this is one of the ways they make money, from fees from all of these credit card transactions. They just don't want to make it clear that they know what their credit card holders are doing with those credit cards that they sponsor.

My name is Bill Burck. And along with my colleagues, Christopher Tayback and Sara Clark, we have the honor and the privilege to represent Ray Akhavan, sitting in the back there.

I'm going to tell you a little bit about Ray. But first I want to describe to you what we believe the evidence will show in this trial and what we don't believe it will show.

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Opening - Mr. Burck

1 The prosecutors' theories boil down to this: Ray
2 helped an online company called Eaze trick Visa and MasterCard
3 into processing sales of marijuana using credit cards issued by
4 various U.S. banks. That's it in kind of a nutshell. Ray and
5 Eaze and a bunch of others did this, the prosecutors claim, by
6 miscoding and misdescribing marijuana transactions as more
7 benign or uncontroversial products. If they hadn't done this,
8 the prosecutors say, the marijuana transactions would have been
9 blocked.

10 But the evidence will show something very different
11 occurred. You will learn from witness testimony and documents
12 in this case that the system is set up to protect banks, to
13 protect them, from admitting knowledge that their customers are
14 using these cards for marijuana purchases. You will hear that
15 Visa and MasterCard have created no codes, no specific codes
16 for marijuana, to help them identify and block marijuana
17 transactions. Typical credit card transactions happen at one
18 time, and they're automated. You will learn that the codes
19 created by Visa and MasterCard are a key part of this automated
20 process, to categorize goods and services that someone is
21 buying when they enter their credit card online, they walk into
22 a store. You will hear their evidence, there is nothing,
23 nothing stopping Visa and MasterCard from creating a code to
24 block marijuana. In fact, evidence will show that Visa and
25 MasterCard have done exactly this for gambling and for illegal

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Opening - Mr. Burck

1 gambling. They have a code that allows them to identify when a
2 gambling service is being purchased by a credit card. And they
3 will block that. Or they'll let it through if it's in a state
4 in which it's legal to gamble. You'll hear evidence on that.

5 So we know know how to make the codes. But they have
6 not done it. And we expect you will hear evidence the banks
7 have written policies, written policies saying, no illegal
8 transactions can be used with our credit cards.

9 Let me show slide no. 2.

10 These are some excerpts from policies that credit card
11 companies and banks issue to card holders, to people who have
12 credit cards, telling them what you can and cannot do. We'll
13 go through this in much more detail at the trial, but just to
14 give you a sense, here's what they say about illegal
15 transactions. For example, at the top, "You agree not to use
16 your cards for illegal gambling or other illegal purpose." You
17 see any reference to marijuana?

18 The next one: "You may not use or permit your account
19 to be used to make any illegal transaction. You will only use
20 your account for transactions that are legal where you conduct
21 them." Well, the evidence is going to show that that is quite
22 an interesting question with marijuana, since it is legal in
23 California and Oregon.

24 The other two, similarly, they reference gambling or
25 they make general statements: "You aren't permitted to use your

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Opening - Mr. Burck

1 account for unlawful transactions."

2 What you're not going to see in any of these warnings,
3 these policies, to card holders, is a statement that you as a
4 credit card holder cannot buy marijuana in states in which it
5 is legal. You're not going to see any reference to marijuana,
6 in any of these statements from credit cards. Gambling, yes.
7 Marijuana, no.

8 But it's not just missing from these policies, from
9 the internal policies. It's missing from their internal
10 discussions, which, you will see some of this in the course of
11 the trial. Marijuana is not something that these banks
12 targeted to stop. The proof will be that they knew exactly
13 what was going on and they wanted it to happen.

14 The banks just didn't care, so long as the credit card
15 holders got what they paid for, there was no fraud to the
16 credit card holders, and the fees that are associated with that
17 transaction went to the banks, and to the credit card
18 companies.

19 The old adage "Actions speak louder than words" is
20 really, really important in this case. The actions of the
21 banks, the credit card companies, don't line up with the words
22 that they have these policies. And we're going to hear
23 testimony, we expect, from bank witnesses, who will, we expect,
24 say, oh, it matters to us. And, again, using your common sense
25 and looking at what actually happened, we believe the evidence

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Opening - Mr. Burck

1 will show that the banks knew exactly what was going on and
2 tacitly approved it.

3 One of the most important things in this case, one of
4 the most important pieces of evidence in this case, goes to the
5 question of whether or not these banks care. You're going to
6 hear from witnesses and evidence that the banks and the credit
7 card companies continue, continue, to process marijuana sales
8 to this day, through Eaze, using debit cards. To this very
9 day.

10 The banks and the credit card companies allow card
11 holders to use their debit cards to buy products online from
12 Eaze, the self-described largest cannabis marketplace in
13 California or, more simply, the Uber of weed.

14 Will you show slide 3.

15 These are examples of cards issued by one of the big
16 banks in this case, Bank of America. On the left is a credit
17 card. On the right is a debit card. The one on the left, the
18 banks will testify, you can't use this to make marijuana
19 transactions. The one on the right is a debit card. And
20 you're going to hear evidence that, to this day, Bank of
21 America and other banks allow you to use that card to knowingly
22 buy Eaze products, to buy marijuana. When I say "knowingly,"
23 I'm talking about the banks and Visa and MasterCard, know that
24 they are using debit cards to buy marijuana to this day.

25 Marijuana sales, the evidence in this case is going to

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Opening - Mr. Burck

1 show, are immaterial to these banks. When I say "immaterial,"
2 I mean they don't care. They are fine with these kinds of
3 transactions. You will learn from Judge Rakoff that
4 materiality is an important element which the government will
5 have to prove beyond a reasonable doubt in this case. And we
6 believe the evidence will show overwhelmingly it was
7 immaterial. It did not matter to these banks. They knew what
8 was going on and they condoned it and they allowed it to go
9 forward.

10 Again, I ask you to use your common sense when you
11 hear testimony from bank witnesses saying, we care about this
12 and it was important to us. Think about the evidence of what
13 they actually did, what was actually happening and what
14 actually is continuing to happen when you decide their
15 credibility.

16 You will also learn at this trial that Eaze, the
17 company at the center of this, continues to do its business of
18 linking up buyers and sellers of marijuana in California and
19 Oregon, despite federal law still banning marijuana sales.
20 Eaze continues to do its business. They haven't been shut
21 down.

22 MS. DEININGER: Objection.

23 THE COURT: Well, I'm not sure that has any relevance,
24 ladies and gentlemen, but we'll take it for now. This is just
25 opening argument. I remind you that nothing that counsel says

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Opening - Mr. Burck

1 is evidence.

2 But you should go on.

3 MR. BURCK: Thank you, your Honor.

4 As the prosecutors said, they will have Eaze witnesses
5 at the trial. Three of them, we expect, will have what are
6 called immunity agreements to testify. One will be testifying
7 under what's called a cooperation deal with the prosecutors,
8 which the prosecutor told you about. We expect that all four
9 of these Eaze employees will say that they worked, they were
10 aware of, or involved in, the supposed trickery of the credit
11 card companies and the banks. But you will also learn that two
12 of these people still work at Eaze. They haven't been fired.
13 They're still there.

14 You'll also learn that Eaze still doesn't use a code
15 for marijuana. Still doesn't use one. And that's because
16 there still isn't a code for marijuana created by Visa or
17 MasterCard. And their banks remain fine with that.

18 You're also going to learn that the thousands and
19 thousands of credit card holders who used their credit cards
20 and their debit cards to buy marijuana during the time of this
21 alleged scheme, you're not going to hear any evidence that a
22 single one of them had their credit cards canceled by the
23 credit card companies or other banks. Not one. Out of all
24 those thousands of people who were supposedly doing something
25 illegal. Not one.

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Opening - Mr. Burck

1 Let me pause here to point out another crucial aspect
2 of the evidence in this case and something the prosecutors need
3 to prove beyond a reasonable doubt. They must prove that the
4 defendants' intent, the defendants' intent, was to defraud the
5 banks that issued the cards, like Bank of America, Wells Fargo,
6 Citi -- the banks. And in this trial, we do not believe there
7 will be a single shred of reliable testimony or evidence that
8 Ray Akhavan ever intended to defraud anyone, much less the
9 banks. You heard the prosecutor in her opening blame Ray and
10 Ruben for a bunch of fake websites that the prosecutors say
11 were designed to fool the credit card companies and the banks.
12 But we expect the evidence will show that it was a man named
13 Oliver Hargreaves who was responsible for the websites. They
14 reference Mr. Hargreaves, naming him as a cooperating witness.

15 Well, who is Oliver Hargreaves? Well, it turns out
16 that Mr. Hargreaves, you'll learn this at trial, was already
17 accused of multiple federal felonies and secretly agreed to
18 help the prosecutors in this case to get himself a better deal.

19 And we think the evidence will show that the craziest
20 websites, the fake websites that the prosecutors laid out, the
21 ones they really rely on, those types of websites suddenly
22 appeared while Mr. Hargreaves was secretly cooperating with the
23 government.

24 MS. DEININGER: Objection.

25 THE COURT: Hold on a minute.

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Opening - Mr. Burck

1 MR. BURCK: We do not believe --

2 THE COURT: Hold on. There was an objection.

3 MR. BURCK: I'm sorry. I can't hear in here. I'm
4 sorry.

5 THE COURT: Overruled.

6 MR. BURCK: Thank you, your Honor. And my apologies,
7 your Honor. I can't hear you very well in here. That's why
8 I --

9 THE COURT: No problem.

10 MR. BURCK: No problem.

11 Let me step back briefly and repeat, we expect the
12 evidence will show that the craziest websites, the ones the
13 government is principally relying upon, suddenly appeared while
14 Mr. Hargreaves was secretly cooperating with the government.
15 We do not believe this is coincidence. We don't think the
16 evidence will show this is coincidence. Instead we expect the
17 evidence will show that these websites were Mr. Hargreaves's
18 creation while he was under the direction of the prosecutors.
19 And you will learn he had good reason to believe, and the
20 evidence will support, that this is true because
21 Mr. Hargreaves's job, expertise, is creating websites. That
22 wasn't and never has been Ray's job, or his expertise.

23 So what was Ray's role in the alleged scheme to
24 allegedly defraud issuing banks? Ray didn't work at Eaze. He
25 didn't work at the credit card companies or the issuing banks.

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Opening - Mr. Burck

1 Ray was an outside consultant to Eaze. And Eaze wanted him to
2 advise them, based on his experience in the credit card
3 industry, on how to conduct credit card processing business.
4 The evidence will show that Ray was not part of the scheme to
5 defraud issuing banks. Instead, we believe you will conclude,
6 after hearing all of the evidence, listening to the witnesses
7 and seeing the documents, that Ray's role was to help Eaze
8 navigate a system set up by Visa and MasterCard and the issuing
9 banks to permit marijuana transactions while not permitting the
10 buyer and the seller to be open about those transactions. That
11 was the system we believe the evidence will show set up by the
12 credit card companies and the banks.

13 In sum, we expect the evidence will show that Ray
14 connected his contacts to the credit card industry, to Eaze, so
15 that Eaze could get marijuana from willing sellers, like
16 dispensaries, to willing buyers, like the thousands of card
17 holders who want to buy marijuana using their credit cards or
18 debit cards. And the evidence will show that, by their
19 actions, the banks know what was going on, and welcomed these
20 transactions, which earn them fees and make their customers,
21 the credit card holders, the debit card holders, happy
22 shoppers.

23 Ladies and gentlemen, we appreciate your careful
24 attention to the evidence we'll hear at trial. And like the
25 government, we ask that you use your common sense. We ask that

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Opening - Mr. Gilbert

1 you listen to Judge Rakoff. We believe that if you do that,
2 after you've considered all the evidence in this case, you will
3 conclude the prosecutors have not proven their case beyond a
4 reasonable doubt, and we believe you will return a verdict of
5 not guilty for Ray Akhavan. Thank you.

6 THE COURT: Thank you very much.

7 Now we'll hear from counsel for Mr. Weigand.

8 MR. GILBERT: Given what we've all been through in the
9 last year, it may be hard for you to remember, it may seem like
10 a distant memory of what life used to be like. But let me ask
11 you to imagine something from our lives before this COVID.
12 Just for a minute, imagine a party, a big gathering of friends,
13 some music, some dancing, good food, conversation, and best of
14 all, no social distancing. Just one of those nights when
15 everything was going well. Everything is going smoothly and
16 everyone is getting exactly what they wanted out of the
17 evening, exactly what they came for. And that's what happened
18 with Eaze. Everyone got what they wanted. The customers of
19 Eaze, they got legal marijuana delivered right to their door.
20 And they got to pay for it the way they paid for pretty much
21 everything else, using a credit card, exactly what they want to
22 do.

23 The drivers who worked for Eaze and did the
24 deliveries, they made money on the deliveries, and they didn't
25 have to pick up cash. They were able to do their job without

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Opening - Mr. Gilbert

1 risking being robbed by having to drive around town with a lot
2 of cash in the car. The Eaze investors and management, well,
3 they really had reason to party. They did very, very well as
4 the value of the company skyrocketed. The champagne was really
5 flowing for them. The banks, I know you already figured that
6 part out, the banks did their thing. They stood outside the
7 door where this lovely party was happening and from each person
8 who went inside, dressed to the nines, bringing a bottle of
9 wine, they took a little entrance fee. And for good measure,
10 when people left laughing and a little tipsy on the way out,
11 they collected their fee too. That's what banks do.

12 (Continued on next page)

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L31PWEI4

Opening - Mr. Gilbert

1 MR. GILBERT: And you may hear from some witnesses
2 from the banks at this trial that, as they stood outside the
3 door, collecting the fees, with the smell of good cooking
4 coming from inside, with people all dressed up, with the music
5 playing loud, well, they had no idea there could possibly be a
6 party going on inside.

7 Now, this was not Ruben Weigand's party. It wasn't at
8 his house. It wasn't even in his country. It wasn't on his
9 continent. He wasn't even on the guest list. A friend said,
10 hey, come in and join us. He came in late, and from what he
11 could see, everything was fine, but now Ruben Weigand is
12 sitting here. Unfortunately, it's not a party. It's as
13 serious as it can be, and only you, ladies and gentlemen, by
14 holding the government to its burden to prove the specific
15 crime they have charged, defrauding U.S. credit card-issuing
16 banks, and to prove it beyond a reasonable doubt, the highest
17 standard in our legal system, and let him leave and go back
18 home.

19 There will be no proof beyond a reasonable doubt that
20 Ruben Weigand, who has lived and worked his whole life in
21 Europe, ever intended to defraud banks in the United States,
22 banks whose only role in these transactions is that they issued
23 credit cards to people who wanted to buy marijuana in states
24 where it was perfectly legal to do so.

25 There will be no proof beyond a reasonable doubt that

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Opening - Mr. Gilbert

1 Ruben Weigand acted with criminal intent towards U.S. banks.
2 There will be no evidence that he had any intent to harm a bank
3 in this country in any way, shape or form. To be clear, there
4 will be no evidence that Ruben ever had a single meeting, a
5 single phone call, or wrote a single text message or e-mail to
6 any bank in the United States. There will be no witness to say
7 that Ruben ever discussed banks in the United States with
8 anyone.

9 There will be no evidence that Ruben Weigand ever gave
10 a second thought to issuing banks in the United States, and at
11 the end of the day, you cannot conspire to deceive someone you
12 haven't even thought about. The evidence will make clear that
13 before Ruben even knew about these credit card processing, Eaze
14 had already been taking credit card payments for years. Eaze
15 had already been using European payment processors and European
16 merchant banks.

17 This had nothing to do with Ruben. The evidence will
18 also show that when Ruben did get involved with Eaze payment
19 processing, when Eaze was looking to revise the processing
20 systems they had already been using since 2016, Ruben got
21 involved in 2018, and he had a very limited role. And that
22 role was focused entirely on Europe, which is where he's from.

23 His role, to put it simply, is that he was an
24 introducer. He introduced people he knew from his business
25 contacts in Europe to assist on the administrative end on the

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Opening - Mr. Gilbert

1 ground in Europe, as Eaze revised the payment processing system
2 they'd been using. And you'll see he weighed in from time to
3 time on some e-mails or chats with some technical advice about
4 how to work with European banks and accounts.

5 And during the few months Ruben was involved, all of
6 the necessary steps to revise the Eaze processing system were
7 taken by others, most of them by Oliver Hargreaves, the
8 government's cooperating witness, who has cut a deal with them,
9 that gives him every reason to pin as much of it on Ruben as he
10 can.

11 But Oliver Hargreaves cannot change the fact that
12 there will be no evidence that Ruben had anything to do with
13 setting up the website that the government talked to you about
14 or those companies that they talked to you about. There will
15 be no evidence that he even saw those websites.

16 My name is Michael Gilbert, along with Michael Artan,
17 who is seated in the back, and Shriram Harid and our
18 colleagues, we have the honor of representing Ruben Weigand in
19 this case.

20 Now, you've already heard from Mr. Akhavan's very able
21 lawyers about the incredibly tortured theory of bank fraud that
22 the prosecution is pursuing here, a fraud where everyone got
23 what they paid for, where the issuing banks, among them the
24 most sophisticated companies in the world, were supposedly
25 deceived about something that they could see out their windows

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Opening - Mr. Gilbert

1 in California; that people who were buying marijuana using
2 credit cards.

3 I won't repeat everything that Mr. Akhavan's lawyers
4 have said, but the fact that to this day you can continue to
5 use a card with a Visa/MasterCard logo on it to buy marijuana
6 through Eaze and the issuing banks continue day after day to
7 approve those transactions clearly labeled, coded as they say,
8 to make it clear, anyone who is looking at it, that it's
9 marijuana, that certainly bears repeating.

10 But as far as Ruben is concerned, there will be no
11 proof beyond a reasonable doubt that what the issuing banks did
12 with the little information, the codes that they got about
13 their card holder's transactions in the Visa/MasterCard system
14 that that mattered at all to Ruben. His focus -- he wasn't
15 focused on Eaze at all. And you'll see in the lengthy text
16 chain and all the documents, and there are many of them, for
17 much of them Ruben says nothing at all. When he does chime in,
18 his focus is always on Europe and on the merchant banks in
19 Europe, not the alleged victims of this crime, U.S. issuing
20 banks.

21 His role stops and ends. He was on the other side of
22 the ocean. So how does Ruben end up here in this courtroom?
23 Well, despite everything I've just told you and everything you
24 heard, you will hear in this trial that in March of last year,
25 this man was on a vacation trip to Costa Rica. He got off his

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Opening - Mr. Gilbert

1 flight, connecting flight, in Los Angeles, and as he was
2 switching planes, he was arrested by the FBI. He was
3 interrogated by the FBI. He never made it to the connecting
4 flight. He never went on that vacation.

5 Now, I will tell you a little bit more about Ruben,
6 who he is and his role in this Eaze credit card processing, but
7 before I do that, let me give you a few minutes about what Eaze
8 was doing before Ruben had anything to do with it. Because it
9 is critical to understand what he was walking into, what the
10 evidence will show about what information was available to him
11 at the time he did get involved.

12 You've already heard Eaze was one of these Silicon
13 Valley darling companies, the next big thing, the Uber of pot,
14 a way to get marijuana delivered to your door with just a press
15 of a button on your phone. And Eaze was not some
16 under-the-radar operation. They had big-money investors,
17 lawyers, a well-developed website for all the world to see. It
18 wasn't hidden. By the end of 2017, Eaze had raised more than
19 \$50 million from investors, and they wanted to have Eaze use
20 credit cards so the sales would increase, and Eaze did it.

21 They wanted to set up credit card processing and they
22 did it before Ruben was involved at all. They used European
23 merchant bank accounts before Ruben was involved. They used
24 European banks before Ruben was involved. It was all in place
25 before Ruben had anything to do with it. To use the label of

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Opening - Mr. Gilbert

1 Silicon Valley, let's call that Eaze payment processing version
2 1.0. That was already set up.

3 Who arranged for these European accounts and banks for
4 Eaze 1.0? Starting as early as 2016, the evidence will show
5 that Eaze worked with a European company called Clearsettle, a
6 major European financial institution, a licensed UK financial
7 company.

8 Now, under the Visa/MasterCard rules, merchant banks
9 were required to contract only with companies in their own
10 jurisdictions. It had become a common practice in Europe, and
11 other areas, for entities sometimes called proxy merchants, to
12 be set up in the same jurisdictions where their banks were.
13 Clearsettle was European. Clearsettle could contract with
14 European parties.

15 You may have noticed yourself from time to time on a
16 credit card statement, if you purchase something online from
17 one company, it shows up on your company statement with the
18 name of a different company. But you bought the product and
19 you paid for it.

20 It was only later, in early 2018, when Eaze processing
21 1.0, the first version, needed a system update, and they were
22 looking for the next thing, version 1.1. Basically the same,
23 but a little bit different.

24 Now, let me pause here and say a little bit about
25 Ruben. You will hear in this trial that Ruben is from Germany.

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Opening - Mr. Gilbert

1 That's where he grew up.

2 Now, it wasn't that long ago that all this payment
3 processing and being able to pay online for things was
4 something that couldn't be done. We take it for granted now.
5 Ruben ran a company, a business called Payment Consultants.

6 MS. DEININGER: Objection.

7 THE COURT: Sustained.

8 MR. GILBERT: You will hear that Ruben's unfortunate
9 involvement in this case traces back to a meeting you've
10 already heard about, where -- or you will hear about, I'm
11 sorry, in January of 2018. He traveled to the U.S. for a trade
12 show. A lot of payment processing people were attending. He
13 was at Ray Akhavan's office for a meeting that had nothing to
14 do with Eaze.

15 Before that meeting, someone in Koen Van Prat, who
16 you'll hear about, came in with Oliver Hargreaves, the
17 government's star cooperating witness. Ruben Weigand had never
18 heard or seen Oliver Hargreaves before. The subject turned to
19 Eaze. While marijuana had already been legal in California for
20 medical use, there was a big change in the works. It was now
21 going to be legal for recreational use too.

22 For Eaze, this required increasing their credit card
23 processing capabilities, and they were looking to scale up
24 their system. Now, think about the context. Eaze was a
25 Silicon Valley company literally with billboards along the

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1 highway in California. Marijuana was legal in California and
2 about to become legal before --

3 MS. DEININGER: Objection.

4 THE COURT: Overruled.

5 MR. GILBERT: I'm sorry, your Honor. I couldn't hear
6 you?

7 THE COURT: Overruled.

8 MR. GILBERT: Thank you, your Honor. It was legal
9 already for medical use and was about to become legal for
10 recreational use. Venture capital funding, input from
11 consultants from the payment card systems, this was blue chip
12 America.

13 Based on the evidence about Eaze that you will see and
14 hear, Ruben had no reason to think that all of these people
15 involved in this would be in some grand conspiracy to violate
16 U.S. law. Just at the point that Eaze was looking to
17 skyrocket, the processing version 1.0 had hit a wall, and they
18 were looking to do this update.

19 Ruben said at that meeting, you'll hear evidence of
20 it, Oliver Hargreaves will tell you, that there was discussion
21 about how Ruben would introduce people he knew in Europe, who
22 might be able to help Eaze and the team to prepare applications
23 to open additional merchant accounts in Europe, using the same
24 exact banks they had already been using in Europe but different
25 accounts.

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1 The idea was that Ruben would introduce some people in
2 person during a trade show in London the next month. At that
3 trade show in London in February of 2018, Ruben introduced
4 Oliver Hargreaves to one of his contacts in Europe, Andreas, to
5 get involved in the project. And from there, it was clear that
6 Oliver's team would work with Andreas on new account
7 applications with the same merchant banks in Europe that they
8 had already been using.

9 Andreas was introduced to Eaze, and they started
10 communicate on a group e-mail, something called EU Processing,
11 which you'll hear about in this trial. I'll just tell you
12 briefly about EU Processing. It's not a company. It's not an
13 office. What is it? Plain and simple, it's an e-mail address.
14 It's a shared e-mail address, meaning several people used it.

15 There will be no evidence that Ruben set up this EU
16 Processing e-mail account, created the account, or owned the
17 account. It was an e-mail address used to coordinate the
18 various moving parts, dispensary, Eaze and the representatives
19 of the European merchant banks. Oliver Hargreaves may look to
20 tie Ruben to everything that was said and done on that EU
21 Processing e-mail, but the evidence does not support it.
22 Guessing, speculating or reading between the lines is not proof
23 beyond a reasonable doubt.

24 Now, as you will see in this trial, Ruben returns to
25 Europe. This connection has been made, and you're going to see

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1 evidence, you're going to see chats and other communications,
2 that Ruben was on relating to the Eaze processing during the
3 next few months in early 2018. Look at the evidence carefully.
4 You will see that much of it does not involve Ruben doing
5 anything, directing anyone to do anything, or contributing much
6 at all. He weighs in from time to time with some technical
7 advice from his experience in Europe.

8 You'll see that most of the government's evidence
9 consists of communications that Ruben was not a part of in any
10 way. And, in fact, you'll see that all of the key aspects of
11 the Eaze credit card processing system, version 1.1, were put
12 in place by Oliver and others. But most importantly, you will
13 not see communications in which Ruben Weigand is discussing how
14 to go about fooling issuing banks in the United States. If
15 Ruben was involved in a criminal conspiracy aimed at U.S.
16 issuing banks, you would think that in all the e-mails, chats
17 and texts, all the documents that you'll see in this trial, and
18 there are a lot, you would see him discussing how do you trick
19 banks in the United States. You will not see that.

20 From mid-2018, Ruben was less and less involved in
21 these discussions and only occasionally heard from the parties,
22 and that makes sense. He was the introducer. He got people
23 connected, and they got things up and running.

24 Now, let me say a few words about Europe and about the
25 European side of this processing. Let me be clear, those

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1 merchant banks that you will hear about, they were not shady
2 underworld operations. They were international financial
3 institutions.

4 MS. DEININGER: Objection.

5 THE COURT: Hold on.

6 (Pause)

7 Well, I'm doubtful about it, but I will allow it with
8 all the caveats that I've already given you.

9 The members of the jury, nothing counsel says is
10 evidence. This is just his prediction. It must be clear to
11 you by now that both sides are predicting very different
12 results of the testimony you will hear. One side is saying
13 it's going to show a fraud filled with lies, the other side
14 says it's going to show nothing of the kind, and in any event,
15 their clients were not involved.

16 You're going to decide those conflicts and all the
17 other conflicts based on the testimony, not based on what
18 counsel says in opening arguments. This is just supposed to
19 give you an overview.

20 And I do think, counsel, maybe you ought to trim your
21 remarks a bit. It sounds like we're getting far into more
22 detail than is appropriate for opening argument.

23 MR. GILBERT: Thank you, your Honor.

24 Well, I will just say that the evidence will show that
25 the merchant banks in Europe were all part of the

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1 Visa/MasterCard network. In order to do that, they had to be
2 accepted onto that network by Visa and MasterCard.

3 Now, the government asks you to use your common sense
4 during this trial, and when you do, you'll be asking yourself:
5 Who are the witnesses against Ruben Weigand? Almost every
6 single witness you will hear from has never met or spoken to
7 Ruben Weigand. Listen closely to the witnesses from Eaze, the
8 beneficiaries of this credit card processing. They barely know
9 who he is.

10 There is no one, no one who will take the stand and
11 tell you: I can help you get inside the mind of Ruben Weigand
12 because I know him, I've spoken to him; he shared what he was
13 thinking with me. So instead, what the government is trying to
14 do is string together a bunch of documents with no real
15 explanation and ask you to infer and to speculate and tell you
16 that it's proof beyond a reasonable doubt, but it is not.

17 Now, let me tell you about one witness who did have
18 one very important conversation with Mr. Weigand and that's the
19 government's cooperating witness, Oliver Hargreaves. He's an
20 admitted money launder, extortionist, and he steals from his
21 own employer. The evidence will show that. The evidence will
22 also show that after he was arrested, he got on a flight and
23 went back to Spain.

24 But he got the hang of cooperating, and in May 2019,
25 you will hear he called Ruben. Tape recorder in hand. His

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whole purpose in making that phone call, we expect he will acknowledge, was to get Ruben to admit that he was involved in a bank fraud scheme, that he conspired to victimize banks in the United States. He took his shot --

MS. DEININGER: Objection. Your Honor, the government does not expect to introduce into evidence the call.

THE COURT: No, but that doesn't mean that defense can't elicit this on cross-examination. Whether or not I will allow that, we'll have to decide then, under all the facts and circumstances. But I don't think it's sufficiently outside the bounds to warrant it an inappropriate in opening statement; so it's overruled.

MR. GILBERT: We expect the evidence will show that when Oliver Hargreaves made this call, he got nothing, nothing at all, from Ruben Weigand.

Now, the government also mentioned that Ruben made some statements after he was arrested at the airport in Los Angeles, and they said he was asked about Eaze, and he said he saw it on a billboard. And you'll listen yourself carefully to that evidence. But what the government is trying to do -- well, what you'll see, ladies and gentlemen, is that that statement is just the opposite of what the government has pointed to it for.

Think about it. If Ruben Weigand had any inkling whatsoever that he'd been involved in some grand conspiracy to

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1 victimize the most powerful financial institutions in the
2 United States, do you think he would have signed up for a
3 connecting flight in Los Angeles on his way to a vacation in
4 Costa Rica? Of course not.

5 The government also said they found some statements
6 and wire confirmations about the Eaze processing on Ruben's
7 computer when he was arrested. And look at that evidence very
8 carefully, and you will see document after document, file after
9 file, the evidence will show that these materials showed up on
10 his laptop only after this alleged conspiracy was over.

11 And most importantly, when you do look at the
12 materials that they got from his laptop, you will see that
13 there's no evidence of him doing anything with those materials
14 while this conspiracy was going on, this alleged conspiracy was
15 happening.

16 And most importantly, there is nothing in anything
17 from that laptop that is any evidence of Ruben defrauding a
18 U.S. credit card-issuing bank or even discussing a U.S. issuing
19 bank. And again, if Ruben thought for one second he was
20 involved in some kind of criminal undertaking involving these
21 powerful U.S. institutions, why on earth would he take these
22 materials with him on his flight through the U.S. on a vacation
23 after this was already over? He wouldn't.

24 Ladies and gentlemen, Ruben is charged with somehow
25 deceiving the most sophisticated financial companies in the

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1 world when those banks had easy, easy access to the very
2 information the government claims was the topic of some grand
3 deception. How can you intentionally defraud someone you're
4 not even thinking about, have never communicated with, had no
5 reason to think could be hurt? You cannot. And Ruben did not.
6 If you hold the government to its burden of proof, you will
7 find that Ruben Weigand is not guilty.

8 THE COURT: Thank you very much.

9 All right. Ladies and gentlemen, that concludes
10 opening statements. Tomorrow, we will start with the evidence
11 starting at 9:45. Since we want to make sure that we finish
12 this trial in three weeks or less, it's important that we start
13 every day at 9:45.

14 So what I suggest is that you aim to be in the room
15 that my courtroom deputy showed you that you'll come into in
16 the morning, where you just came up from, by 9:30, and that
17 way, we can be sure that you're all here by 9:45 and we can
18 start right on time.

19 So have a very good evening, and I'll see you tomorrow
20 at 9:45.

21 THE DEPUTY CLERK: We're going to go back out the way
22 we came in, ladies and gentlemen.

23 (Jury not present)

24 THE COURT: Please be seated. So the last objection
25 raised an issue that I don't think had been raised previously

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1 with the Court, but if I understand what counsel was arguing,
2 you want to argue that when the government attempted, through
3 its undercover agent -- I'm sorry, through its cooperating
4 witness to elicit incriminating statements from Mr. Weigand,
5 they got nothing. And I think that is probably admissible, but
6 let me hear what the government's objection is.

7 MS. DEININGER: Your Honor, the evidence of what
8 Mr. Weigand said on this call is -- I think is simply hearsay.
9 It is not being admitted against the --

10 THE COURT: No, their argument is he was being -- this
11 presumably would come out in cross with your cooperator. The
12 cooperator is being asked to elicit incriminating statements
13 from Mr. Weigand. They had a conversation for that purpose,
14 and lo and behold, what Mr. Weigand said was not incriminating.
15 That seems to me to be evidence of his lack of criminal intent.

16 I can instruct the jury it's not being offered for its
17 substance; so I don't understand why that wouldn't be
18 admissible.

19 MS. DEININGER: It's not that Mr. Weigand said
20 nothing. They did have conversations, and so the only way to
21 assess whether or not what he said was incriminating would be
22 to hear what Mr. Weigand said in those conversations.

23 THE COURT: Well, once they go down that road, even if
24 you previously had said you weren't going to introduce it, then
25 the door is open for you to introduce it, if you prefer, as a

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1 classic opening the door. But they, obviously, have made that
2 strategic decision.

3 MS. DEININGER: Your Honor, the government has no
4 intent on introducing those calls, and our position is that
5 asking questions about those statements would be directly
6 attempting to elicit those hearsay statements.

7 THE COURT: If they were offering it for -- let me
8 give a hypothetical. So in my hypothetical, undercover
9 cooperator X calls up Mr. Y and says: Don't you remember when
10 we agreed to rob that bank? And Y says: You got to be
11 kidding. We never agreed to anything like that. Don't joke
12 around. That's baloney. That would not be admissible to show
13 that they didn't rob the bank but, over a hearsay objection, it
14 would be admissible to show lack of intent because he was being
15 invited, by someone who allegedly was his co-conspirator, to
16 confirm incriminating matters and instead he didn't.

17 I'm raising this now because if there's case law on
18 this that you want to bring to my attention, that's fine, and
19 I'm not making any final ruling, but it seems to me that it's
20 probably admissible with a limiting instruction.

21 MS. DEININGER: Yes, your Honor. I think we would
22 like a chance to submit something in writing on that.

23 THE COURT: Okay. That's fine.

24 So just as a more general matter, if, at the end of
25 the day, in reflecting on the day's proceedings, you, any

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1 party, comes up with, gee, I wish I had argued more about so
2 and so, and I have not yet made a final ruling, then you are
3 free, without further permission needed from the Court, to send
4 an e-mail, copying of course all lawyers, saying, you know,
5 apropos the pending issue of so and so, we also want to bring
6 to your Honor's attention whatever you want to say.

7 By contrast, once I've ruled finally, I don't want to
8 hear from you. Okay?

9 All right. Very good. So I look forward -- as I
10 said, we should congregate -- I don't think we have much to
11 discuss -- so maybe 9:30 tomorrow rather than 9:00, and we'll
12 start promptly at 9:45.

13 MS. LA MORTE: Just one point of clarification on the
14 schedule, your Honor. I don't remember if this juror was
15 selected, but there was some juror that had some sort of
16 doctor's appointment or vaccine.

17 THE COURT: That juror was excused.

18 MS. LA MORTE: I think it was three.

19 THE COURT: There's no juror presently, that I can
20 recall, that has anything other than a total devotion to
21 listening to your testimony or to your presentation. So I'm
22 sure if there's anything contrary, the juror will let me know,
23 but I'm pretty sure that everyone -- there were several jurors
24 that had that chronic problem, and I think they all wound up
25 being stricken.

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1 All right. Very good. I'm sorry, was there something
2 else?

3 MR. TAYBACK: There is one additional matter. We will
4 be submitting a proposed order on an application for, I believe
5 there's a plan to test the remote testimony devices this
6 afternoon in court. In order to do that, we have to bring in a
7 couple extra laptops that are only for the purpose of that
8 testimony.

9 THE COURT: It's all okay with me. The person who
10 knows whether we need an order or not is really Linda; so you
11 should e-mail her and she will let you know.

12 MR. TAYBACK: We will do that. Thank you, your Honor.

13 THE COURT: All right. See you tomorrow.

14 (Adjourned to March 2, 2021, at 9:30 a.m.)

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